



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J.D. Telecom Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she served the tenant with her application for dispute resolution via registered mail on May 14, 2020. A receipt for same was entered into evidence. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?

3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on March 1, 2020 and is currently ongoing. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant owes \$1,500.00 from May 2020's rent. The landlord testified that she has not made a payback agreement with the tenant and has not served the tenant with a repayment plan.

Analysis

Residential Tenancy Branch Policy Guideline #52 states:

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled.

Affected rent is defined as:

rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17

Residential Tenancy Branch Policy Guideline #52 states that where a landlord is required to give a repayment plan but no valid repayment plan has been given and no valid prior agreement exists, the arbitrator may dismiss the application with leave to reapply.

Pursuant to the above, as the parties do not have a prior agreement and the landlord has not served the tenant with a repayment plan, I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply.

I find that the landlord's application to retain the tenant's security deposit is premature as this tenancy is ongoing. I therefore dismiss the landlord's application to retain the security deposit with leave to reapply.

As the landlord was not successful in this application for dispute resolution I dismiss the landlord's claim for the return of the filing fee, without leave to reapply.

Conclusion

The landlord's application for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to retain the tenant's security deposit, pursuant to section 38.

is dismissed with leave to reapply.

The landlord's application for:

- authorization to recover the filing fee from the tenant, pursuant to section 72.

Is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 14, 2020

Residential Tenancy Branch