



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$8,457.50 for unpaid rent or utilities, money owed or compensation under the Act, tenancy agreement or regulation, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord and an agent for the landlord SH (agent) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 3, 2020 (Notice of Hearing), the application and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on July 4, 2020. The landlord provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant and the rental unit address as the tenant was still residing in the rental unit at that time. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. The Canada Post registered mail tracking website confirms the landlord's testimony as accurate.

Preliminary and Procedural Matters

At the outset of the hearing the landlord confirmed their email address as well as the email address for the tenant. The landlord was advised that the decision will be emailed to both parties.

The landlord testified that in addition to the rent owed as claimed, the tenant has subsequently vacated the rental unit and failed to pay rent for September 2020 even though the tenant did not vacate until September 4, 2020 based on a previous decision where an order of possession was granted (previous decision). For ease of reference, the previous decision file number has been included on the style of cause. As a result, the landlord requested to amend the application to include loss of rent owed for September 2020. I find this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement, on the first day of each month. Therefore, I amend the application to include loss of September 2020 rent.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 26, 2019 and was scheduled to revert to a month to month tenancy after September 4, 2020. Monthly rent was \$2,050.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$950.00 at the start of the tenancy, which has accrued no interest under the Act, and which the landlord continues to hold.

The landlord's amended monetary claim totals \$12,057.50 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Strata fines – dog excrement and related cleaning	\$157.50
2. Unpaid portion of April 2020 rent	\$1,550.00

3. Unpaid May 2020 rent	\$2,050.00
4. Unpaid June 2020 rent	\$2,050.00
5. Unpaid July 2020 rent	\$2,050.00
6. Unpaid August 2020 rent	\$2,050.00
7. Unpaid/loss September 2020 rent	\$2,050.00
8. Filing fee	\$100.00
TOTAL	\$12,057.50

Regarding item 1, the landlord presented documents which support that the tenant failed to clean up after their dog and that due to dog excrement and the related carpet cleaning, the owner was fined \$157.50. The landlord testified that the tenant signed a Form K document and is responsible for the strata fine as a result and is seeking \$157.50 for this item.

Regarding items 2 through 7 inclusive, the landlord testified that the tenant failed to pay full rent for April 2020 and after having only paid \$500.00 for April 2020, continues to owe \$1,550.00 for April 2020 rent. The landlord testified that the tenant did not pay any rent for May, June, July, August or September 2020.

The landlord testified that the tenant did not vacate until September 4, 2020 as that was the date in which the tenant's parents returned the keys to the rental unit to the landlord. The landlord testified that they were unable to secure a new tenant for September 2020 due to the cleaning that was required in the unit. The landlord pointed out that the tenant did not have permission to end the fixed-term tenancy early and the landlord is not waiving any rights to compensation for the breach of the fixed-term tenancy. The landlord served an order of possession on the tenant; however, the landlord is seeking all of the unpaid rent and loss of rent under the Act.

Regarding item 8, the filing fee, I will address the filing fee later in this decision.

Analysis

Based on the undisputed documentary evidence presented, the undisputed testimony of the landlord and agent and on the balance of probabilities, I find the following.

Item 1 – As the landlord testified that the tenant signed a Form K and based on the undisputed evidence before me, I find the tenant is liable for the strata fine of \$157.50 as I find the tenant did not clean up after their dog, which resulted in the strata fine.

Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$157.50** as claimed for this item.

Items 2, 3, 4, 5, 6 and 7 - Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
[Emphasis added]

In the matter before me, I find the tenants failed to pay rent as claimed by the landlord and that the landlord also suffered a loss of rent for September 2020 and as a result, I find the tenant breached section 26 of the Act and owes the landlord as a result. Consequently, I award the landlord **\$11,800.00** for unpaid rent and loss of rent as follows:

Unpaid portion of April 2020 rent	\$1,550.00
Unpaid May 2020 rent	\$2,050.00
Unpaid June 2020 rent	\$2,050.00
Unpaid July 2020 rent	\$2,050.00
Unpaid August 2020 rent	\$2,050.00
Unpaid/loss September 2020 rent	\$2,050.00
Total	\$11,800.00

As the landlord's claim is fully successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act. Therefore, I find the landlord has established a total monetary claim of **\$12,057.50** as claimed.

As the landlord continues to hold the tenant's \$950.00 security deposit and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's full \$950.00 security deposit including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$11,107.50**.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The landlord's claim is fully successful.

The landlord has established a total monetary claim of \$12,057.50. The landlord has been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$950.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$11,107.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant has been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2020

Residential Tenancy Branch