



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Barclay Place Holdings and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDCL-S, FFL

Introduction

This hearing was convened in response to:

A first application made June 17, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72; and

A second application made September 3, 2030 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord withdraws its first application as the claim for unpaid rent has been resolved by mutual agreement. The Tenant confirms the mutual agreement. As the Landlord has withdrawn its application for unpaid rent and given the undisputed evidence that the Parties have entered into a mutual agreement for the unpaid rent, I dismiss the first application in its entirety.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on March 15, 2015 and ended on August 31, 2020. At the outset of the tenancy the Landlord collected a security deposit of \$575.00. On August 25, 2020 the Parties entered into a mutual agreement for the repayment of rents owed during the tenancy. This agreement includes the rents that are the subject of the Landlord's first application. The Tenant has made the payments as agreed to date. There are no terms in the mutual agreement that include the Tenant's agreement for the Landlord to retain the security deposit. The Tenant returned the fob and the garage opener at the end of the tenancy.

The Landlord claims the retention of the security deposit of \$575.00, fob deposit of \$75.00 and the garage opener deposit of \$45.00 on the basis that the Tenant owes a large amount of money to the Landlord under the mutual agreement. The Tenant disputes these claims as none of this was agreed to in the mutual agreement on rent and the Tenant did not otherwise provide the Landlord with written authorization to retain the security deposit. The Tenant is not willing to agree to the deduction as it is on a budget due to the pandemic.

Analysis

Section 6(1)(a) of the Regulations provides that if a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is refundable upon return of the key or access device. Given the undisputed evidence that there are no terms in the mutual agreement for the Landlord to retain the fob and opener deposits and based on the undisputed evidence that the fob and opener were returned I find that the Landlord is not entitled to retain these deposits and I dismiss this claim. The Landlord is ordered to return the deposits of **\$75.00** and **\$45.00** to the Tenant forthwith.

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. While I accept that the Tenant owes the Landlord unpaid rent, this has been settled by mutual agreement. There are no terms in mutual agreement for the retention of the security deposit at the end of the tenancy. Further the Landlord has not made any compensation claim and I note that there is no evidence of a breach of the mutual agreement. For these reasons I find that the Landlord has not substantiated an entitlement to retain the security deposit. As the Landlord's claim has not been successful, I dismiss the Landlord's claim for recovery of the filing fee. The Landlord is ordered to return the security deposit plus zero interest of **\$575.00** to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$695.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: October 14, 2020

Residential Tenancy Branch