



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on September 6, 2020. The Landlord applied for a monetary order for losses due to the tenancy, for a monetary order for the unpaid rent, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, for permission to retain the security deposit and to recover their filing fee. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the Act states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Application for Dispute Resolution and the Notice of hearing documents to the Tenant by Canada Post Registered mail, sent on September 16, 2020; a registered mail receipt was submitted into documentary evidence as proof of service. I find that the Tenant has been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary matter – Application Amended to Withdraw Items

At the outset of the hearing, the Landlord testified that they wished to remove their claim for damages and losses due to the Tenancy in order to apply for an amended amount for those items at a later date.

The Landlords requested to continue in these proceedings in their claim for unpaid rent and outstanding late fees for this tenancy.

I find it appropriate to grant the Landlord's request to amend their application during these proceedings.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to a monetary order for late fees?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on August 1, 2019, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. The Landlord testified that rent in the amount of \$1,600.00 was to be paid by the first day of each month and that they had been given an \$800.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement with the attached addendum into documentary evidence.

The Landlord testified that this tenancy ended on November 23, 2020, the date the Tenant moved out of the rental unit.

The Landlord testified that the Tenant had not paid the rent for August, September, October, November 2020, in the amount of \$6,400.00. The Landlord is requesting a monetary order for the outstanding rent.

The Landlord also testified that there are \$200.00 in outstanding late fees due for this tenancy, referencing section 12 of the addendum to this tenancy agreement. The

Landlord testified that the \$200.00 in late fees consist of, \$25.00 for October 2019, \$25.00 for November 2019, \$25.00 for December 2019, \$25.00 for February 2020, \$25.00 for March 2020, \$25.00 for September 2020, \$25.00 for October 2020 and \$25.00 for November 2020. The Landlord is requesting a monetary order for the outstanding late fees due for this tenancy. The Landlord submitted five emails into documentary evidence.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

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.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the undisputed testimony of the Landlord that the rent has not been paid in the amount of \$6,400.00 for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$6,400.00, comprised of \$1,600.00 in rent for August 2020, \$1,600.00

in rent for September 2020, \$1,600.00 in rent for October 2020, \$1,600.00 in rent for November 2020. I grant permission to the Landlord to keep the \$800.00 security deposit for this tenancy in partial satisfaction of this award.

Additionally, I accept the testimony of the Landlord supported by their documentary evidence that the rent for this tenancy has been paid late eight times. I find that the Landlord has established an entitlement to a monetary award in the amount of \$200.00, for the collection of late fees due under the tenancy agreement for the late payment of rent; comprised of \$25.00 for October 2019, \$25.00 for November 2019, \$25.00 for December 2019, \$25.00 for February 2020, \$25.00 for March 2020, \$25.00 for September 2020, \$25.00 for October 2020 and \$25.00 for November 2020.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$5,900.00, consisting of \$6,400.00 in unpaid, \$200.00 in late fees, \$100.00 in the recovery of the filing fee for this hearing, less the \$800.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$5,900.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 17, 2020

Residential Tenancy Branch