



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-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 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") 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 agent and I were the only ones who called into this teleconference.

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on September 21, 2020. A Canada Post receipt confirming same was entered into evidence. The agent testified that the tenant refused to pick up the package and it was returned to sender. I find that the tenant is not permitted to avoid service by failing to pick up the registered mail. I find that the tenant was deemed served with the landlord's application for dispute resolution on September 26, 2020, pursuant to sections 89 and 90 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 agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on August 1, 2020 and ended on September 1, 2020. This was a fixed term tenancy set to end on January 31, 2021. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 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 agent testified that the tenant and the landlord completed a joint move in condition inspection report on July 31, 2020 and a joint move out condition inspection report on September 1, 2020. The reports were entered into evidence and were signed by the tenant. The agent testified that the tenant provided the landlord with her forwarding address on the move out condition inspection report. The move out condition inspection report confirms the above testimony.

The agent testified that on August 15, 2020 the tenant gave notice to end this tenancy effective September 1, 2020, via text message. The agent testified that he immediately started advertising the subject rental property for rent and was able to find a new tenant starting October 1, 2020. The agent testified that the landlord is seeking to recover the loss of September 2020's rent from the tenant in the amount of \$1,250.00.

The landlord filed this application for dispute resolution on September 14, 2020.

Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

I accept the agent's undisputed testimony that the tenant ended a fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenant is required to compensate the landlord for that loss of rental income. I accept the agent's undisputed testimony that he immediately started advertising the property for re-rent but was not able to find a new tenant for the month of September 2020.

I find that the agent mitigated the landlord's damages by promptly advertising the subject rental property for rent. The tenant, pursuant to section 7 and Policy Guideline 16, is therefore liable for September 2020's rent in the amount of \$1,250.00.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$625.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
September rent	\$1,250.00
Filing fee	\$100.00
Less security deposit	-\$625.00
TOTAL	\$725.00

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: January 05, 2021

Residential Tenancy Branch