



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, 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;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 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 1:44 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 the tenant was served with this application for dispute resolution on September 24, 2020 via registered mail. A Canada Post receipt stating 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 a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. 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 the landlord's 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 July 14, 2019 and ended on October 15, 2020. Monthly rent in the amount of \$2,800.00 was payable on the first day of each month. A security deposit of \$1,400.00 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 did not provide a forwarding address at the end of this tenancy.

The landlord testified that in a previous arbitration hearing the parties entered into a settlement agreement. The settlement agreement dated August 14, 2020 was entered into evidence. The file number for this arbitration is located on the cover page of this decision. Term 3 and 4 of the settlement agreement state:

3. The tenant agreed to pay the landlord \$2,800.00 total by September 15, 2020 by e-transfer, which the landlord agreed to accept for rent from August 14 to September 13, 2020;

4. The tenant agreed to pay the landlord \$2,800.00 total by October 1, 2020 by e-transfer, which the landlord agreed to accept for rent from September 14 to October 13, 2020;

The settlement agreement goes on to state:

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute....

If future rent is unpaid by the tenant, from August 14, 2020 onwards, which was not yet due at the time of this hearing, the landlord is at liberty to file an application for dispute resolution at the Residential Tenancy Branch.

The landlord testified that the tenant did not pay rent from August 14, 2020 to October 15, 2020. The landlord testified that he is seeking \$5,600.00 in unpaid rent.

The landlord testified that since the tenant breached the tenancy agreement, he is seeking to recover the \$100.00 filing fee from the previous hearing and the filing fee for this hearing.

The landlord testified that he is seeking to recover \$150.00 for the cost of arbitration preparation and sending the tenant documents via registered mail. Registered mail receipts in the amount of \$13.59 and \$12.27 were entered into evidence.

The landlord's monetary order worksheet states that the landlord is seeking \$1,400.00 for compensation for damage to the landlord's reputation. The landlord's application for dispute resolution states:

I received a Violation Noise Complaint issued by the [City] few months ago that there was a neighbourhood complaint regarding noise disturbance and that RCMP attended and confirmed the information. This is easily cause reputational damage. It is also a warning about the safety of my property specially that I am not able to access it. So I am requesting to keep the Damage Deposit till the end of tennancy/move out final inspection.

The landlord testified that the City sent him a violation letter regarding a noise made by the tenant. The above described letter dated March 17, 2020 was entered into evidence.

This application for dispute resolution was filed on September 24, 2020. The landlord testified that after the tenant moved out on October 15, 2020, the landlord learned that the subject rental property was damaged and required repair. The landlord did not amend this application to include a claim for damage to the subject rental property or provide documentary evidence of the alleged damage.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

I find that the tenant breached term 3 and 4 of the settlement agreement and section 26 of the *Act* by failing to pay rent when it was due. I therefore find that the landlord is entitled to a monetary award for unpaid rent in the amount of \$5,600.00.

As stated in the August 14, 2020 settlement agreement, the settlement agreement is “legal, final, binding and enforceable, which settle[s] all aspects of this dispute”. I find that the landlord is not entitled to recover the filing fee for the previous arbitration because the settlement agreement settled all aspects of that dispute including the landlord’s claim for the filing fee. The landlord is therefore barred from seeking the filing fee in this application.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process or serving the other party with documents pertaining to the tenancy. I dismiss the landlords claim for the cost of preparing for this hearing and all registered mail costs.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the landlord has not proved that a noise violation letter from the city of the subject rental property lead to a loss of \$1,400.00. I therefore dismiss this claim.

The landlord did not file a claim for physical damage to the subject rental property. I therefore will not consider the landlord's testimony in this regard; however, the landlord is entitled to file an application for dispute resolution making these claims against the tenant.

As the landlord was successful in his monetary claim for unpaid rent, 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 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*.

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 \$1,400.00.

Conclusion

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

Item	Amount
Unpaid rent	\$5,600.00
Filing fee	\$100.00
Less security deposit	-\$1,400.00
Total	\$4,300.00

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 13, 2021

Residential Tenancy Branch