



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canstate Holdings Ltd. Korecki Real
Estate Services Inc.
and [tenant name suppressed to protect privacy]

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 award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties were represented at the hearing by their respective agents who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were represented service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as sought?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in 1989. A security deposit of \$725.00 was collected at the start of the tenancy and is held by the landlord. The tenancy ended on September 30, 2020. The landlord has calculated the interest on the deposit to be \$473.90 as at the date the tenancy ended.

The landlord submits that the monthly rent at the end of the tenancy was \$2,205.00 payable on the first of each month. The parties agree that the tenant did not pay that full amount but made payments of \$1,700.00 monthly. The landlord indicated on each of those lesser payments that the full amount of rent was \$2,205.00 and any lesser amount was accepted for “use and occupancy”. The landlord submits that as at the date of the hearing there is a rental arrear of \$3,835.00. The landlord said that they seek a monetary award only in the amount of the security deposit and interest.

The tenant confirmed that they paid only a monthly amount of \$1,700.00. The tenant claims that this was the full amount they had the means to pay. The tenant submits that they believed that there was an agreement with the landlord that the monthly rent had been reduced to this amount. The tenant says that they did not consent to their payments being accepted for “use and occupancy only” and their payments should be considered full and final payment of rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the landlord that monthly rent for this tenancy was \$2,205.00 payable on the first of each month. The correspondence between the parties clearly indicates the amount of the monthly rent and it is evident that there was never an agreement to lower the monthly rent or waive their right to the full amount. I am satisfied that the landlord indicated that any partial payments were being accepted for “use and occupancy only” and did not reinstate the tenancy nor was it a waiver of their right to the full rent owing.

I find the tenant’s submission that the partial payments should be considered full payment of rent as they did not consent to the payments being accepted for use and occupancy to be nonsensical. It is not open for a tenant to unilaterally determine what the amount of the rent will be or to expect that whatever amount they pay be deemed full payment.

I am satisfied on a balance of probabilities that there is a rental arrear in the amount of \$3,835.00 as at the date of the hearing. I therefore issue a monetary award in the landlord's favour in that amount.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

I accept the landlord's calculation that the interest on the security deposit for this tenancy is \$473.90 and that they hold the total amount of \$1,198.90.

The landlord has waived their right to a monetary award above the amount of the deposit and interest. Therefore, in accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit and interest in full in satisfaction of the monetary award issued in the landlord's favour

Conclusion

The landlord is authorized to retain the full security deposit for this tenancy.

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: February 8, 2021

Residential Tenancy Branch