



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Suite Home Properties Ltd. 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 Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and an agent of the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenant with the landlord's application for dispute resolution via registered mail. I find that the landlord's application for dispute resolution was served in accordance with section 89 of the *Act*.

Preliminary Issue- Tenant's Evidence

The tenant testified that she emailed the landlord with her evidence the day before this hearing. The tenant's evidence was uploaded to the Residential Tenancy Branch the day before this hearing.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

I find that the tenant's evidence was served extremely late, preventing the landlord from the opportunity to adequately review and respond to it. The tenant's documentary evidence is therefore excluded from consideration.

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 and pet damage deposits, 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2019 and the tenant moved out October 7, 2020 and provided the keys to the landlord on October 9, 2020. Monthly rent in the amount of \$2,190.00 was payable on the first day of each month. A security deposit of \$1,092.50 and a pet damage deposit of \$1,092.50 were paid by the tenant to the landlord.

Both parties agree on the following facts:

- the tenant gave the landlord one month's notice to end the tenancy effective September 30, 2020;
- in early September 2020, the tenant requested an extension to stay until October 31, 2020 - the landlord consented; and
- in late September 2020 the tenant requested an earlier move out date.

Text messages establishing the above were entered into evidence by the landlord.

The agent testified that the landlord agreed to allow the tenant to move out of the subject rental property before October 31, 2020 but that she would be responsible for that month's rent unless a new tenant could be found. The agent testified that a new potential tenant was found to move in part-way through October 2020 but before a new tenancy agreement was signed, the prospective tenant pulled out. The agent testified that the landlord was unable to find a tenant to move in earlier than November 1, 2020.

Both parties agree that the tenant paid the landlord \$635.00 in rent for October 2020, a pro-rated amount equal to nine days. The agent testified that the landlord is seeking \$1,555.00 in unpaid rent for the remainder of October 2020's rent.

The tenant testified that in a phone call on September 28, 2020, another agent of the landlord told her that she would only owe the landlord nine days of pro-rated rent at the subject rental property for October 2020. The tenant testified that she did not need a full month extension, just a week so that she could move out on a weekend.

The agent testified that the other agent informed the tenant that she would not have to pay all of October 2020's rent if a new tenant was found who could move in part way through the month; however, no such new tenant was found.

Both parties agreed that the tenant provided the landlord with her forwarding address in writing on October 7, 2020. The landlord applied for dispute resolution on October 24, 2020.

Analysis

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant gave the landlord notice to end tenancy effective October 31, 2020 and later sought to end the tenancy earlier. I find, on a balance of probabilities, that the landlord agreed to try and find a new tenant to move in earlier than November 1, 2020 and that in such a case, the tenant would not owe rent for the days the new tenant

occupied the rental unit. I find that the landlord was not successful in finding a new tenant to move in earlier than November 1, 2020.

Residential Tenancy Policy Guideline #5 explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the *Act*, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Residential Tenancy Policy Guideline # 3 states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

I find that the tenant's legal notice took effect on October 31, 2020. I find that the tenant is responsible for all of October 2020's rent and owes the landlord \$1,555.00 in unpaid rent. I find that this tenancy ended on October 31, 2020.

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 \$1,655.00 from the

tenant's security and pet damage deposits. I Order the landlord to return the remaining \$530.00 to the tenant.

Conclusion

The landlord is entitled to retain \$1,655.00 from the tenant's security and pet damage deposits.

I order the landlord to return the remainder of the tenant's security and pet damage deposits, in the amount of \$530.00, to the tenant.

I issue a Monetary Order to the tenant in the amount of \$530.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: February 16, 2021

Residential Tenancy Branch