



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that they had permission to represent the landlord company named in this application at this hearing.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on January 27, 2021, by way of registered mail to the rental unit. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. The landlord stated that the tenant signed for the mail on February 4, 2021. In accordance with sections 89 and 90 of the *Act*, I find that tenant was deemed served with the landlord's application on February 1, 2021, five days after its registered mailing.

At the outset of the hearing, the landlord claimed that the tenant vacated the rental unit on February 4, 2021. The landlord stated that an order of possession against the tenant was not required. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on February 1, 2019 and ended on February 4, 2021. Monthly rent in the amount of \$920.00 was payable on the first day of each month. The rent at the beginning of the tenancy was \$900.00 and was increased to \$920.00 effective February 1, 2020, pursuant to a notice of rent increase given to the tenant in September 2019. A security deposit of \$450.00 and a pet damage deposit of \$150.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks unpaid April 2020 rent of \$320.00, May 2020 rent of \$100.00, October 2020 rent of \$100.00, and November 2020 to February 2021 rent of \$920.00 for each month, totalling \$4,200.00. The landlord claimed that the landlord was seeking full February 2021 rent, despite the tenant vacating on February 4, since the tenant did not provide proper notice to vacate the rental unit and the landlord has been unable to re-rent the unit to new tenants to date, because it has to be cleaned and repaired first.

The landlord seeks to retain the tenant's deposits, totalling \$600.00, against the unpaid rent. The landlord also seeks to recover the \$100.00 filing fee paid for this application.

Analysis

On a balance of probabilities and for the reasons stated below, I make the following findings based on the landlord's undisputed evidence.

Section 26 of the *Act* requires a tenant to pay rent when it is due under a tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I accept the landlord's undisputed evidence that the rent for the unit was legally changed from \$900.00 to \$920.00, as per sections 42 and 43 of the *Act*. I accept the landlord's undisputed evidence that the tenant was given at least 3 months' notice on the approved form in accordance with the 2.6% rent increase amount for the year 2020.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$4,200.00 from April 2020 to February 2021, to the landlord. The landlord is provided with a monetary award for \$4,200.00.

Although the tenant vacated the rental unit on February 4, 2021, I find that the landlord entitled to a full month of rent of \$920.00 for February 2021 from the tenant. Rent was due on February 1, 2021 and was not paid by the tenant. I accept the landlord's undisputed evidence that the tenant did not provide at least one month's written notice to vacate the rental unit, as required by section 45(1) of the *Act*. I accept that the landlord has been unable to re-rent the unit to new tenants, to date, since the landlord is required to clean and repair the rental unit.

The landlord continues to hold the tenant's deposits totalling \$600.00. There is no interest payable on the deposits during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits totalling \$600.00, in partial satisfaction of the monetary award.

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.

Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I order the landlord to retain the tenant's deposits totalling \$600.00 in partial satisfaction of the monetary award.

I issue a monetary Order in the landlord's favour in the amount of \$3,700.00. 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: February 26, 2021

Residential Tenancy Branch