



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL
 MNDSD-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on October 28, 2020. The Landlord applied for a monetary order for unpaid rent or utilities, permission to retain the security deposit and an order to recover the cost of filing the application.

The Tenant’s Application for Dispute Resolution was made on November 12, 2020. The Tenants applied for the return of their security deposit and the return of their filing fee.

Both the Landlord, the Tenant, and the Tenant’s assistant (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Tenant entitled to the return of their security deposit?
- Is the Landlord entitled to recover the filing fee for this application?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlords testified that the Tenant ended her tenancy and moved out of the rental unit on September 25, 2020, and that the Tenant had not provided them with written notice to end their tenancy, nor had the Tenant paid the rent for September 2020. The Landlords testified they received the Tenant's forwarding address on October 20, 2020, by personal service from the Tenant. The Landlord is requesting the recovery of the unpaid rent for September 2020 and for permission to retain the security deposit as partial payment towards the unpaid rent.

The Tenant testified that the Landlord had put the rental unit up for sale and had verbally asked them to move out. The Tenant argued that as the rent was not paid for September 2020, but that they did not pay that rent as the Landlord told them they did not have to pay.

The Landlord testified that they did not ask the Tenant to move out and they did not tell them it was ok to not pay the rent.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the agreed-upon testimony of these parties that this tenancy ended on September 25, 2020, and that the Tenant provided their forwarding address to the Landlord on October 20, 2020.

I also accept the agreed-upon testimony of these parties that the rent had not been paid for September 2020. Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,000.00, comprised of \$2,000.00 in rent for September 2020, less the \$1,000.00 the Landlord is holding as a security deposit for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$1,100.00, consisting of \$2,000.00 in rent and the recovery of the \$100.00 filing fee for this hearing, less the \$1,000.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlords under sections 67 and 72 of the Act. I grant the Landlords a **Monetary Order** in the amount of **\$1,100.00**. The Landlords are 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: February 4, 2021

Residential Tenancy Branch