



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 06, 2020 (the "Application"). The Landlord applied as follows:

- To recover unpaid rent.
- For compensation for monetary loss or other money owed.
- To keep the security deposit.
- For reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord withdrew the request for compensation for monetary loss or other money owed which was for \$133.48 for unpaid hydro bills.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were sent by registered mail to the Tenant's forwarding address on November 15, 2020. The Landlord advised that the Tenant left a forwarding address without a city but that the Landlord knew where the Tenant was from and looked the address and postal code up. The Landlord confirmed Tracking Number 1 relates to the package. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered November 20, 2020.

The Landlord submitted a receipt with Tracking Number 1 on it. The Landlord referred to a copy of the Tenant's forwarding address being in evidence; however, I have reviewed the evidence and do not see this.

Based on the undisputed testimony of the Landlord, receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I am satisfied the Tenant received the package November 20, 2020. I am also satisfied the Landlord complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service.

As I was satisfied of service of the Tenant, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent for October	\$200.00
2	November rent	\$1,400.00
3	Filing fee	\$100.00
	TOTAL	\$1,700.00

The Landlord testified as follows.

The Landlord and Tenant signed a written tenancy agreement. The tenancy started August 07, 2020 and was for a fixed term ending November 30, 2020. Rent was \$1,400.00 per month due on or before the first day of the month. A \$700.00 security deposit was paid.

The Tenant vacated the rental unit November 03, 2020.

The Landlord received a partial forwarding address in writing from the Tenant November 02, 2020.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The Tenant agreed to the Landlord keeping the security deposit verbally but not in writing.

The Landlord and Tenant did a move-in inspection; however, no Condition Inspection Report was completed.

No move-out inspection was done. The Landlord did give the Tenant two opportunities to do a move-out inspection but did not give the Tenant a second opportunity on the RTB form.

#1 Unpaid rent for October

The Tenant failed to pay \$200.00 of October rent. The Tenant did not have authority under the *Act* to withhold rent for October. The Landlord is relying on an e-transfer in evidence for this item.

#2 November rent

The Tenant gave notice October 09, 2020 that he was moving out at the end of October. The Tenant moved out November 03, 2020 and did not pay November rent. The Landlord did not attempt to re-rent the unit for November because his friend was moving into the rental unit in December and therefore the rental unit could only be rented for less than a month. The Tenant said he knew people who would rent the unit for November; however, when the Landlord contacted these people they did not answer and never got back to the Landlord.

The Landlord submitted the following relevant evidence:

- Email notice from the Tenant October 09, 2020 ending the tenancy at the end of October.
- Email correspondence between the parties about the end of the tenancy.

- Text messages between the parties about the end of the tenancy.
- A text message dated October 06th from the Tenant about ending the tenancy.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Landlord about move-in and move-out inspections, I do not find that the Tenant extinguished his rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid rent.

Based on the undisputed testimony of the Landlord, I am satisfied the tenancy ended November 03, 2020 when the Tenant vacated.

Based on the undisputed testimony of the Landlord, I am satisfied the Landlord received a partial forwarding address for the Tenant November 02, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant’s forwarding address in writing to repay the security deposit or claim against it. The Application was filed November 06, 2020, within 15 days of the end of the tenancy. I am satisfied the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Unpaid rent for October

Section 26 of the *Act* states:

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.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant was required to pay \$1,400.00 in rent per month on or before the first day of the month pursuant to the tenancy agreement.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant failed to pay \$200.00 of rent for October and did not have authority under the *Act* to withhold this rent.

I am satisfied the Tenant owes the Landlord \$200.00 for October rent and award the Landlord this amount.

#2 November rent

Section 45 of the *Act* states:

(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Based on the undisputed testimony of the Landlord, I am satisfied the parties entered into a fixed term tenancy ending November 30, 2020.

Based on the undisputed testimony of the Landlord, emails and text messages, I am satisfied the Tenant gave notice ending the tenancy for the end of October on October 06th at the earliest. I am satisfied the Tenant breached section 45(2) of the *Act* and the tenancy agreement by ending the fixed term tenancy early.

Based on the undisputed testimony of the Landlord, I am satisfied the rental unit was not re-rented for November and therefore am satisfied the Landlord lost November rent due to the Tenant's breach.

The Landlord was required to do what was reasonable to mitigate his loss. I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not move out of the rental unit until November 03, 2020. I am also satisfied based on the undisputed testimony of the Landlord that he had someone else moving into the rental unit in December and therefore could have only re-rented the unit for the remainder of November. I do not find that the Landlord was required to try to re-rent the unit for one month as I am not satisfied this would have been reasonable in the circumstances.

Further, the Tenant gave notice on October 06th at the earliest. This notice was not effective until November 30, 2020 pursuant to section 45(2) and 53 of the *Act*.

In the circumstances, I am satisfied the Landlord is entitled to recover loss of rent for November and award the Landlord \$1,400.00.

Filing fee

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid rent for October	\$200.00
2	November rent	\$1,400.00
3	Filing fee	\$100.00
	TOTAL	\$1,700.00

The Landlord can keep the \$700.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a monetary order for the remaining \$1,000.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$1,700.00. The Landlord can keep the security deposit. The Landlord is issued a monetary order for the remaining \$1,000.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: February 24, 2021

Residential Tenancy Branch