



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG THE RESIDENTIAL GROUP
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on March 26, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord and the Tenant both attended the hearing. The Tenant did not submit any documentary evidence for the hearing. The Tenant confirmed receipt of the Landlord's Notice of Hearing and evidence package, sent via email, as per the substituted service order issued on December 10, 2020. I find the Landlord sufficiently served the Tenant with the application and evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agree that monthly rent was \$2,400.00, and was due on the 9th of the month. Both parties also agree that the Landlord still holds a security deposit in the amount of \$1,200.00.

The Landlord provided a copy of the tenancy agreement, which shows that the Tenant was under a fixed term tenancy agreement until December 9, 2020. The Landlord stated that the Tenant moved out in early November, with only a couple days notice.

The Landlord stated the Tenant never paid any rent for November, did not give hardly any advance notice she would be vacating, and also was not in a position to vacate early due to her fixed term lease.

The Tenant acknowledged that she emailed the Landlord on October 30, 2020, and that she moved out within a day or so following this. The Tenant stated she had to leave the province due to a family emergency. The Tenant does not refute that she didn't pay rent for November.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

As the tenancy is now over, it is not necessary to consider whether or not the rent was "affected rent" and whether or not a repayment plan was given to the Tenant.

I find the Tenant was under a fixed term tenancy agreement until December 9, 2020, and she was not in a position to legally end the tenancy by written Notice, prior to that date.

I note the following portion of the Act:

45 (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.

I find the Tenant breached section 45(2) of the Act when she gave written notice, via email on October 30, 2020. I am satisfied the Landlord could have done very little, if anything, to mitigate their losses for November rent, given they were only given a couple of days advance Notice. Ultimately, I find the Tenant is liable for November rent in the amount of \$2,400.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent	\$2,400.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,200.00)
TOTAL:	\$1,300.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,300.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 26, 2021

Residential Tenancy Branch