



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- an authorization to retain the tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:47 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served in person with the application and evidence (the materials) at the rental unit on December 10, 2020 at 10:30 A.M., in accordance with section 89(1)(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Amendment to exclude monetary claim for bailiff expenses

At the outset of the hearing the landlord amended his application to reduce the amount requested to \$10,100.00, excluding the monetary claim for compensation for bailiff expenses.

Pursuant to section 4.2 of the Rules of Procedure and section 64(3)(c) of the Act, I amend the landlord's application for a monetary order to \$10,100.00.

Issue to be Decided

Is the landlord entitled to:

1. monetary order for unpaid rent?
2. an authorization to retain the tenant's deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate his claims.

The landlord stated the tenancy started on October 15, 2017 and ended on December 10, 2020. Rent was \$1,700.00 per month, due on the fifteenth day of the month. At the outset of the tenancy a security deposit of \$1,700.00 was collected. The landlord holds the deposit in trust. The tenancy agreement was submitted into evidence.

The landlord affirmed the tenant paid \$1,000.00 for part of March rent (balance of \$700.00); \$700.00 per month for part of April, May, June, July, August and September rent (balance of \$6,000.00) and did not pay rent in October and November 2020 (balance of \$3,400.00). The landlord is claiming for \$10,100.00 for unpaid rent from March to November 2020. A handwritten ledger was submitted into evidence.

The landlord said the tenant has not provided his forwarding address.

Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement:

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.

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$1,700.00 on the fifteenth day of the month.

Based on the landlord's undisputed testimony and the documentary evidence, I find the tenant is in arrears for the balance of March rent (\$700.00), balances of April, May, June, July, August and September rent (\$6,000.00) and October and November 2020 rent (\$3,400.00), in the total amount of \$10,100.00.

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's security deposit of \$1,700.00 in partial satisfaction of the monetary award granted.

In summary:

Balance of unpaid rent March 2020	\$700.00
Balance of unpaid rent April 2020	\$1,000.00
Balance of unpaid rent May 2020	\$1,000.00
Balance of unpaid rent June 2020	\$1,000.00
Balance of unpaid rent July 2020	\$1,000.00
Balance of unpaid rent August 2020	\$1,000.00
Balance of unpaid rent September 2020	\$1,000.00
Unpaid rent October 2020	\$1,700.00
Unpaid rent November 2020	\$1,700.00
Filing fee	\$100.00
Minus security deposit	\$1,700.00 (subtract)
Total monetary award	\$8,500.00

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,700.00 security deposit and grant the landlord a monetary order in the amount of \$8,500.00

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: March 22, 2021

Residential Tenancy Branch