



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order for unpaid rent or utilities, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, WL (agent), counsel for the landlord, RP (counsel) and the tenant attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence and make submissions. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they had received the landlord's documentary evidence and had the opportunity to review it prior to the hearing. Counsel confirmed that while there were some documents that the landlord could not open from the tenant, they were willing to proceed with the hearing without an adjournment and as result, the hearing proceeded.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. A monetary order, if granted, will be emailed to the appropriate party for service on the other party.

Issue to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's remaining security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

At the outset of the hearing, the parties agree that of the original security deposit of \$1,994.00, was reduced by \$712.00 based on a previous decision dated October 15, 2020 (previous decision). In addition, the security deposit was further reduced by another \$150.00 for cleaning costs that the tenant confirmed at this hearing that they permitted as a deduction from their security deposit, leaving a balance of \$1,132.00 for the tenant's security deposit. The previous decision file number has been included on the style of cause for ease of reference.

The landlord's monetary claim of \$3,385.57 is comprised as follows:

| ITEM DESCRIPTION | AMOUNT |
|---|-------------------|
| 1. Unpaid August rent | \$4,088.00 |
| 2. <i>Less credit of 4 days for October overpayment of rent</i> | -\$204.42) |
| 3. <i>Less credit from end of July to tenant</i> | -\$2.13) |
| 4. <i>Less credit to tenant of gas and hydro</i> | -\$495.88) |
| TOTAL | \$3,385.57 |

The tenant confirmed that August 2020 rent was "missed" due to two housemates going through COVID. The tenant referred to a previous decision dated August 21, 2020, where the tenant claims they were granted a \$300.00 amount; however, I have read that decision and it states the following on page 12:

2. In the event that the work the landlords committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement is not completed by August 31, 2020, **the tenants will be allowed to reduce their monthly rent by \$300.00 as of September 1, 2020.**

[emphasis added]

In addition, on page 12 of the August 21, 2020 previous decision, the arbitrator writes:

I further order the tenants to recover their \$100.00 filing fee for their application by ordering them to reduce either the amount owing for their August 2020 rent or for an upcoming monthly rental payment by \$100.00.

In the August 21, 2020 decision, that decision also refers to a settled matter dated April 30, 2020. All file numbers have been included on the style of cause for ease of reference. In the April 30, 2020 previous decision, which was resolved by way of a mutually settled agreement pursuant to section 63 of the Act, the tenant was authorized to deduct \$100.00 from a future month's rent. This was several months prior to August 2020 and the tenant did not provide evidence that they applied that filing fee to August 2020 rent.

The landlord submitted a copy of the tenant's statement of account dated 2020-11-09 (statement). While there was a "filing fee" entry of a tenant credit for \$100.00, it was entered on 2020-05-12, which was over 3 months prior to the August 21, 2020 decision granting the tenant the filing fee. There are no other "filing fee" entries on the statement submitted in evidence. The \$712.00 deduction from the security deposit from the October 15, 2020 decision and the \$150.00 cleaning deduction are both reflected in the statement.

The tenant asked that previous decisions be reviewed prior to making my decision; however, I can only review the decisions which were presented during the hearing, as I am not an investigator and it is the responsibility of the parties to present all relevant evidence during the hearing. The previous decision file numbers referred to in this decision have been included on the style of cause for ease of reference.

Analysis

Based on the documentary evidence, undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Monetary claim of landlord – I have carefully considered the testimony, documentary evidence and previous decisions as noted above, and find that the \$100.00 filing fee from the August 21, 2020 previous decision was not included in the statement and as a result, I will be deducting that amount from the landlord's monetary claim of \$3,385.57.

I find the tenant provided insufficient evidence that they had a right to deduct \$300.00 for August 2020 rent as the previous decision dated August 21, 2020 clearly states:

2. In the event that the work the landlords committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement is not completed by August 31, 2020, **the tenants will be allowed to reduce their monthly rent by \$300.00 as of September 1, 2020.**

[emphasis added]

As a result, I find that August 2020 rent of \$4,088.00 was due in full as of August 1, 2020 and that the tenant failed to pay that amount contrary to section 26 of the Act. Section 26 of the Act states that a tenant must pay rent on the date that it is due and I find the tenant has provided insufficient evidence to support that they had a right under the Act to withhold \$300.00 from August 2020 rent.

Based on the above, I find the tenant breached section 26 of the Act by failing to pay \$4,088.00 in rent for August 2020 rent. I also accept that the landlord provided the correct credits to the tenant, with the exception of the \$100.00 filing fee granted in the August 21, 2020 previous decision. Therefore, I find the landlord has met the burden of proof for the total amount owing of **\$3,285.57**, which is the amount of the landlord's claim, less the \$100.00 filing fee described in the previous decision dated August 21, 2020.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee for this application, which increases the total amount I am awarding to **\$3,385.57**.

Monetary Order – I find that the landlord has established a total monetary claim of **\$3,385.57** as described above. I find this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit balance of \$1,132.00, which has accrued \$0.00 in interest to date as the tenancy began on October 1, 2018.

I authorize the landlord to retain the tenant's full security deposit balance of \$1,132.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of **\$2,253.57**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord's claim is mostly successful. The landlord has established a total monetary claim of \$3,385.57 as indicated above. The landlord has been authorized to retain the tenant's full security deposit balance of \$1,132.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 of the Act for the balance due by the tenant to the landlord in the amount of \$2,253.57. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2021

Residential Tenancy Branch