



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, MNRL-S, FFL**

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent, a late fee, compensation for a smoke detector; and, authorization to retain the tenant's security deposit.

The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant. The landlord's agent was affirmed and confirmed she was not making an unofficial recording of the proceedings.

Since the tenant did not appear, I explored service of hearing documents upon the tenant.

The landlord submitted a registered mail receipt, including tracking number, as proof the proceeding package was sent to the tenant via registered mail on December 23, 2020. The address used for service was the tenant's forwarding address that she provided on her written notice to end tenancy dated November 30, 2020, which was also provided as evidence. A search of the registered mail tracking number showed the registered mail was successfully delivered. Based on this evidence, I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenant and the former landlord entered into a tenancy agreement for a month to month tenancy that started on August 2, 2020. The tenant paid a security deposit of \$450.00 and was required to pay rent of \$900.00 on the first day of every month.

The current landlord purchased the property in October 2020.

The landlord's agent testified that the tenant did not pay rent for November 2020 and then on November 30, 2020 the tenant gave a one month written notice to end tenancy effective December 31, 2020. The landlord's agent testified the tenant did not pay any rent for December 2020 and on December 7, 2020 the tenant dropped the keys off to the landlord's manager and the rental unit was found vacant. The landlord's agent proceeded to do a move-out inspection without the tenant present.

By way of this Application for Dispute Resolution, the landlord is seeking to recover unpaid rent for the months of November 2020 and December 2020. The landlord's agent testified that the unit was not re-rented until April 9, 2021 as the landlord proceeded to renovate the rental unit after the tenancy ended.

The landlord also requested a late fee for December 2020 but the landlord's agent withdrew this claim during the hearing since the tenancy agreement does not provide for late fees. Accordingly, I dismissed this claim, without leave, and did not give it further consideration.

Finally, the landlord requested compensation for a smoke detector purchased and installed in the rental unit during the renovation. The landlord's agent submitted evidence, that a smoke detector was not in the rental unit at the end of the tenancy, namely the move-out inspection report and a photograph of a smoke detector bracket on the ceiling; however, the landlord's agent conceded she did not know if there was a smoke detector in the unit at the start of the tenancy in the absence of a move-in inspection report.

Documentary evidence provided by the landlord included a copy of: the tenancy agreement; the tenant's notice to end tenancy; the move-out inspection report; a receipt showing the purchase of a new smoke detector; and, a work order showing the smoke detector was to be installed during the renovation. The landlord also provided an image of what appears to be a bracket on the ceiling designed to hold a smoke detector.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Unpaid rent

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

Based on the tenancy agreement, I accept that the tenant was required to pay rent of \$900.00 on the first day of every month under her month to month tenancy agreement. The tenant gave a written notice to end the tenancy dated November 30, 2020 to be effective on December 31, 2020. The tenant also retained possession of the rental unit until December 7, 2020. Accordingly, I find the tenant was required to pay rent for the months of November 2020 and December 2020 and I accept the landlord's unopposed submission that the tenant did not pay rent for these two months. I was not presented any evidence to suggest she had a legal right to withhold rent and I accept the unopposed submission of the landlord that the rental unit was not re-rented in the month of December 2020. Therefore, I grant the landlord's request to recover unpaid rent of \$1800.00 from the tenant for the months of November 2020 and December 2020.

As for the landlord's claim for purchasing and installing a new smoke detector, I find the landlord provided insufficient evidence to demonstrate the tenant is liable to compensate the landlord for the amount claimed. While the landlord demonstrated a new smoke detector was purchased after the tenancy ended, the landlord was unable to demonstrate there was a smoke detector in the unit when the tenancy started and if there had been a smoke detector the landlord did not know its age. Considering smoke detectors have a limited useful life, it is generally appropriate to award the depreciated value of the missing item and in the absence of its age I would be unable to do that. For all of these reasons, I dismiss the landlord's request for compensation for a smoke detector from the tenant.

The landlord's claim for unpaid rent had merit and I award the landlord recovery of the \$100.00 filing fee.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – November 2020	\$ 900.00
Unpaid rent – December 2020	900.00
Filing fee	100.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$1450.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$1450.00 to serve and enforce upon the tenant.

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: April 28, 2021

Residential Tenancy Branch