



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: DRI CNR OLC RP RR FFT
For the landlord: OPR MNRL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act).

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, to dispute a rent increase, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, for a rent reduction and to recover the cost of the filing fee.

The landlord applied for an order of possession for unpaid rent or utilities, for a money order for unpaid rent or utilities, to retain the security deposit towards any amount owing and to recover the cost of the filing fee.

The tenant AGL (tenant) and the landlord GM (landlord) attended the teleconference hearing. An opportunity was given to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

The parties also confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Furthermore, pursuant to section 62(3) of the Act, I have removed all tenants from the tenant application that were not listed on the tenancy agreement submitted in evidence. I have also removed the second landlord as they were not listed on the tenancy agreement.

Finally, at the outset of the hearing the parties confirmed that the tenant vacated the rental unit on April 27, 2021. As a result, I find the tenant's application is now moot and I dismiss it in full, without leave to reapply as the tenancy ended on April 27, 2021, when the tenant vacated the rental unit. I will therefore only deal with the landlord's application for the remainder of this decision. However, I note that the landlord does not require an order of possession so I will not be dealing with an order of possession as a result. Also, the landlord testified that they are no longer seeking to retain the tenant's security deposit as the tenant did not have permission to offset the rent owed with the security deposit and have not provided a written forwarding address to the landlord since vacating the rental unit.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence by the landlord. A fixed-term tenancy began on May 15, 2018 and reverted to a month to month tenancy after May 14, 2019. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold, which was increased by \$100.00 by consent of the parties in November 2019 to \$700.00 when the parties agreed that instead of four people residing in the 2-bedroom rental unit, the tenant's mother would also move in and by mutual agreement of the parties, monthly rent increased to \$1,400.00 and the security deposit increased to match the new monthly rent as noted above.

There is no dispute that the tenant vacated the rental unit on February 27, 2021. The tenant paid half of February 2021 rent, or \$700.00 to the landlord. The landlord testified that the tenant, without permission, used the security deposit of \$700.00 to make up the difference of the other half of February 2021 rent of \$700.00. The landlord is seeking a monetary claim for the \$700.00 still owing for half of February 2021 rent as the landlord continues to hold the tenant's security deposit of \$700.00, and stated that the tenant has failed to provide a written forwarding address to the landlord as required by the Act.

The tenant confirmed that although they wrote to the landlord advising the landlord that they were giving permission to the landlord to retain the tenant's \$700.00 security deposit towards the half of February 2021 rent. The parties confirmed that the landlord did not respond to the tenant to advise that this was acceptable to the landlord.

Analysis

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

Section 39 of the Act applies and states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b)the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis added]

As a result, the tenant has until February 27, 2022 to provide the landlord their written forwarding address, which up to the point of the hearing the tenant has failed to do.

In addition, the tenant has no right under the Act to use the security deposit towards unpaid rent unless the landlord agrees, which in the matter before me, the landlord did not agree to. Therefore, I find the landlord has met the burden of proof and is owed **\$700.00** for the half of February 2021 rent owed. I find the tenant breached section 26 of the Act that applies and states:

Rules about payment and non-payment of rent

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.

[emphasis added]

I find the tenant provided insufficient evidence that they had any right under the Act to use their security deposit towards February 2021 rent owed. As a result, I grant the landlord **\$700.00** as claimed for the unpaid portion of February 2021 rent.

As the landlord's claim had merit, I also grant the landlord **\$100.00** pursuant to section 72 of the Act for the recovery of the cost of the filing fee.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$800.00**, which is comprised of \$700.00 rent arrears and the \$100.00 filing fee.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The tenant's application is dismissed without leave to reapply, as the tenancy has ended which makes the tenant's application moot.

The landlord's application has merit and is successful.

The landlord has been granted a monetary order in the amount of \$800.00. 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.

The tenant has been cautioned as noted above.

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: April 13, 2021

Residential Tenancy Branch