



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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.

The landlord attended the hearing and was assisted by an agent, SM. The landlord's agent testified that he served the tenant with the Notice of Dispute Resolution Proceedings by personally serving an adult who apparently resides with the tenant. The agent testified that on January 22, 2021 at 11:00 p.m., while posting the Notice of Dispute Resolution Proceedings to the tenant's door, a female person exited the elevator and proceeded to enter the tenant's rental unit using a key in her possession. The female said she was not the named tenant, however she would give the Notice of Dispute Resolution Proceedings to the tenant. Pursuant to section 71(2)(b), I find the Notice of Dispute Resolution Proceedings was sufficiently served upon the tenant on January 22, 2021.

Preliminary Issue

The landlord's Application for Dispute Resolution Proceedings Package named two individuals yet the tenancy agreement supplied as evidence indicates a single tenant. The landlord's agent testified that the error was made by him, as he misunderstood the tenancy agreement, thinking there were two tenants. The landlord testified that there is in fact, a single tenant, the person named on the cover page of this decision. The landlord has in her possession a copy of the tenant's identification, including his birth certificate and verified the name of the tenant is the person who signed the tenancy agreement. In accordance with section 64(3) of the *Act*, the landlord's Application for Dispute Resolution Proceedings is amended to reflect the proper name of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on March 1, 2020 with rent set at \$1,600.00 per month. A security deposit of \$800.00 was collected by the landlord which she continues to hold.

The tenant stopped paying rent on September 1, 2020 and has not paid any rent since August of 2020. On December 15, 2020, the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. The notice states the tenant failed to pay rent in the amount of \$6,400.00 representing rent for the months of October to December by December 1, 2020. The landlord testified that the tenant did not file an application to dispute the notice and did not pay any rent since receiving the notice. In Mid-February, the landlord was advised by the building manager that the tenant had vacated the rental unit, leaving the door wide open. The landlord seeks to recover rent for the months of January and February in addition to the \$6,400.00 in arrears.

The landlord testified the rental unit has been renovated following damage done by the tenant and that it has been successfully rented out for May 1, 2021.

Analysis

Pursuant to section 44(1)(d), I find the tenancy ended on February 15, 2021 when the tenant vacated the rental unit. As this tenancy has ended, the landlord no longer

requires an order of possession and I dismiss the landlord's application seeking an order of possession without leave to reapply.

Section 26(1) of the *Act* states 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.

Sections 67 states: Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the *Act* I find it reasonable to grant the landlord's application to amend the Application for Dispute Resolution to include additional arrears up to the middle of February, 2021. I find the tenant had no right to deduct any portion of the rent and that he failed to pay rent from September 2020 to February 15, 2021. For the tenant's breach of section 26, I find the landlord is entitled to compensation in the amount of $\$1,600.00 \times 5.5 \text{ (months)} = \$8,800.00$. The landlord is awarded a monetary order for \$8,800.00 pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. As the landlord continues to hold the tenant's security deposit of \$800.00 and in accordance with the offsetting provisions of section 72, I order the landlord to retain the tenant's full security deposit in partial satisfaction of the monetary order.

Item	Amount
Rent from September 1, to February 15, 2021	\$8,800.00
Filing fee	\$100.00
Less security deposit	(\$800.00)
Total	\$8,100.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$8,100.00**.

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 19, 2021

Residential Tenancy Branch