



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On December 10, 2020, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 39-minute teleconference. At the outset of the hearing, the Landlord was advised that recording of the hearing was prohibited and he was reminded to refrain from doing so. All parties in attendance provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by email on December 24, 2020 pursuant to Substituted Service Decision dated December 22, 2020. Proof of service was submitted to corroborate this service. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on March 15, 2019 and ended when the Tenant gave up vacant possession of the rental unit in the first week of October 2020. Rent was established at \$800.00 per month and was due on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$400.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that the Tenant never provided a forwarding address in writing.

He advised that he is seeking compensation in the amount of **\$200.00** because the Tenant only paid \$600.00 of March 2020 rent on March 6, 2020. He stated that rent would be paid by electronic transfer and he submitted copies of his bank statements to support his position that this balance was not paid by the Tenant.

He advised that he is seeking compensation in the amount of **\$800.00** because the Tenant's rent for April 2020 went unpaid.

He advised that he is seeking compensation in the amount of **\$500.00** because a portion of the Tenant's rent for July 2020 was paid through the government as a COVID supplement.

He advised that he is seeking compensation in the amount of **\$2,400.00** because the Tenant did not pay any rent for the months of August, September, or October 2020. However, he did confirm that he received a Monetary Order already for September 2020 rent from a separate Dispute Resolution proceeding (the relevant file number is noted on the first page of this Decision).

He advised that he is seeking compensation in the amount of **\$60.43** because the Tenant did not pay his share of the utilities from April 15, 2020 to June 11, 2020. He advised that the Tenant was responsible for paying for half of the utilities and he had done so for the first year of the tenancy. However, he stopped paying for his portion after that year. The Landlord submitted a copy of the hydro bill to support his position that this amount was not paid by the Tenant.

He advised that he is seeking compensation in the amount of **\$73.93** because the Tenant did not pay his share of the utilities from June 12, 2020 to August 12, 2020. He submitted a copy of the hydro bill to support his position that this amount was not paid by the Tenant.

Finally, he advised that he is seeking compensation in the amount of **\$100.00** for the filing fee from the previous Application for Dispute Resolution that he filed. However, he confirmed that he was already awarded a Monetary Order for this amount.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage at the end of the tenancy. With respect to the Landlord's claim against the Tenant's deposits, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Tenant never provided a forwarding address in writing to the Landlord. Therefore, I find that the doubling provisions do not apply to the deposits in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines

that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claim for lost rent, I am satisfied from the undisputed evidence that the Tenant did not pay the rent that the Landlord was claiming for. However, as the Landlord already was awarded a Monetary Order for September 2020 rent, this amount cannot be awarded a second time. Consequently, I grant the Landlord a monetary award in the amount of **\$3,100.00** for the remaining outstanding rental arrears.

With respect to the Landlord’s claims for compensation for the utilities owed, I am satisfied from the undisputed evidence before me that the Tenant was responsible for half of the utilities, and that he did not pay these amounts outstanding. As a result, I grant the Landlord a monetary award in the amount of **\$134.36** for the outstanding utilities arrears.

Regarding the Landlord’s claim for the filing fee on the previous Application, as the Landlord has already been awarded this amount, I dismiss this claim without leave to reapply.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

| | |
|--|----------|
| March 2020 rent arrears | \$200.00 |
| April 2020 rent arrears | \$800.00 |
| July 2020 rent arrears | \$500.00 |
| August 2020 rent arrears | \$800.00 |
| October 2020 rent arrears | \$800.00 |
| Utilities arrears from April to June 2020 | \$60.43 |
| Utilities arrears from June to August 2020 | \$73.93 |

| | |
|-----------------------------|-------------------|
| Filing fee | \$100.00 |
| Security deposit | -\$400.00 |
| Pet damage deposit | -\$400.00 |
| TOTAL MONETARY AWARD | \$2,534.36 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,534.36** in the above terms, and the Tenant must be served with **this Order** as soon as possible. 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: April 27, 2021

Residential Tenancy Branch