



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 7, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing. The Tenant did not attend the hearing. The Landlord stated that she sent the Tenant a copy of the Notice of Hearing and evidence by registered mail on January 7, 2021. This package was sent to the rental unit. Proof of registered mailing was provided for this package. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on January 12, 2021, the fifth day after their mailing.

Subsequently, the Landlord filed two amendments, to increase the amount of rent owing, and to recover the bailiff costs. The Landlord sent the first amendment to the Tenant by registered mail on January 29, 2021. Tracking information shows this package was delivered on February 2, 2021. The Landlord sent the second amendment to the Tenant on February 6, 2021, and this package was delivered on February 10, 2021. The Landlord clarified that the mailbox for this house is a community mailbox, separate from the house, and all Tenants at the house have keys and access to the mailbox.

The Landlord noted that she hired a bailiff to come and physically remove the Tenant, based on a previously obtained order of possession, on February 2, 2021. The Landlord stated that the Tenant has retained her mailbox key and still checks her mail, even after being forced out. I note all amendments and subsequent evidence was sent to the Tenant at the community mailbox affiliated with this tenancy. Although the tenancy came to an end on February 2, 2021, when the bailiff removed the Tenant, I accept the undisputed testimony that the Tenant retained her mailbox keys, and still checked her mail after she left.

The Landlord provided tracking information to show that the amendments were delivered on February 2nd and 10th, respectively to the Tenant's mailbox. Pursuant to section 71(2)(b), I find the Tenant has been sufficiently served with the amendments and evidence on the day the tracking information shows they were delivered, February 2, and February 10, 2021.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord stated that monthly rent was set at \$1,760.00 and was due on the first of the month. The Landlord stated that this included utilities. A copy of the tenancy agreement was provided into evidence. The Landlord holds a security deposit in the amount of \$825.00.

The Landlord is seeking the following items, as per her application and amendments:

- 1) \$3,680.00 – Unpaid Rent

The Landlord stated that the Tenant failed to pay \$160.00 from November 2020, and also failed to pay any rent for December or January 2021. The Landlord stated this amounts to \$3,680.00. The Landlord stated that the Tenant did not leave the unit until February 2, 2021, when the bailiff removed her.

2) \$1,942.58 – Bailiff Costs

The Landlord stated that she was issued an order of possession in January of 2021, and the Tenant failed to obey the order. As a result, the Landlord had to hire a bailiff to come and remove the Tenant, which cost the above noted amount. This amount is reflected on the invoice from the bailiff company.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on the undisputed evidence and testimony, I find the Tenant failed to pay any rent for January 2021, December 2020, and failed to \$160.00 from November 2020. I award these amounts in full, \$3,680.00.

Further, with respect to the bailiff costs, I accept that the Tenant failed to vacate the rental unit, as ordered, and as a result the Landlord incurred \$1,942.58 to have the Tenant removed. I find the Tenant is liable for this item, in full.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items listed above	\$5,622.58
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$365.00)
TOTAL:	\$4,897.58

Conclusion

The Landlord is granted a monetary order in the amount of **\$4,897.58**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 07, 2021

Residential Tenancy Branch