



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL, MNDL**

Introduction

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both parties had individuals in the respective rooms with them to provide support and assistance.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on September 1, 2020. A copy of the signed tenancy agreement was submitted into evidence. The monthly rent was \$1,150.00 payable on the first of each month. A security deposit of \$575.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The landlord submits that the tenant vacated the rental unit sometime in January 2021 without providing notice to end the tenancy and failed to pay rent for the month of February 2021.

The landlord also submits that they believe the tenant removed some electronics from the rental unit for which they seek compensation. The landlord now seeks a monetary award in the amount of \$1,725.00 consisting of unpaid rent for February 2021 of \$1,150.00 and to hold the security deposit of \$575.00.

The tenant disputes the landlord's claim in its entirety. The tenant confirms that they moved out of the rental unit on January 31, 2021 and submitted into evidence a copy of a text message from the landlord stating they are "evicted as of January 31/21".

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that the landlord issued a text to the tenant on February 1, 2021 stating that they have been “evicted as of January 31/21”. While the landlord’s message does not conform to the form and content requirement of section 52 of the *Act*, has not been properly served and would have been a nullity under the *Act*, the tenant did not dispute and accepted that the tenancy retroactively ended on January 31, 2021. The landlord now seeks rent for the month of February 2021 despite their own position that the tenancy ended on January 31, 2021. I find the landlord’s current position to be inconsistent with their own earlier correspondence and have no basis. The landlord themselves said that the tenancy ended on January 31, 2021 and I find no obligation on the tenant to pay rent for February when the tenancy has ended. I dismiss this portion of the landlord’s application.

The parties agree that no condition inspection report was prepared at any time for this tenancy. In the absence of a proper report prepared in accordance with the *Act* and regulations I find little evidence to support the landlord’s position that there were electronic devices in the rental unit or that they were subsequently removed by the tenant. I find the landlord’s testimony and submissions regarding the condition of the suite to be insufficient in the absence of a proper condition inspection report. I do not find invoices from the utility companies regarding the electronics to be sufficient to establish that their costs are attributable to the tenant or the tenancy and accordingly, I dismiss this portion of the landlord’s application.

Pursuant to section 24(2) the right of a landlord to claim against a security deposit is extinguished if they do not prepare a condition inspection report in accordance with the *Act*. I accept the undisputed evidence that no condition inspection report was prepared at any time for this tenancy and find that the landlord has extinguished their right to the deposit.

The landlord is in the business of renting accommodations and it is reasonable to expect that they are familiar with the *Act* and legislation governing tenancies. In the present circumstance the landlord’s conduct demonstrates a disregard for the requirements of the *Act* and their monetary claim to have no basis.

Section 38 of the *Act* requires the landlord to either return the tenant’s security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Residential Tenancy Policy Guideline 18 further provides that:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Accordingly, I issue a monetary order in the tenant's favour in the amount of \$1,150.00, double the value of the security deposit for this tenancy. No interest is applicable on this amount.

As the landlord was unsuccessful in their application, they are not entitled to recover their filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,150.00. The landlord 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: July 9, 2021

Residential Tenancy Branch