



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S OPR FFL

Introduction

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

- 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;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$11,375 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 pm in order to enable the tenant to call into this teleconference hearing scheduled for 11:30 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 testified he served that the tenant with the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on March 10, 2021. He testified that he served the tenant with an amendment to this application (increasing the amount of the claim to include additional months of unpaid rent) on April 26, 2021 in the same manner. He submitted photographs of manilla envelopes posted to the door of the rental unit supporting this testimony. I find that the tenant has been served with the required documents in accordance with the Act.

Preliminary Issue – Tenant's Prior Application

At the outset of the hearing, the landlord advised me that he attended a hearing on June 14, 2021 regarding an application of the tenant to cancel a 10 Day Notice to End Tenancy for Non-Payment of Rent. The file number for this application is recorded on the cover of this decision. The tenant did not attend the hearing. At that hearing, the presiding arbitrator dismissed the tenant's application, upheld the 10 Day Notice, and issued an order of possession and a monetary order for the repayment of February

2021 rent (the month's arrears for which the 10 Day Notice was issued). The presiding arbitrator made no order relating to the security deposit.

The landlord promptly enforced the order of possession, and a bailiff removed the tenant from the rental unit on June 29, 2021. As such, the landlord advised me that he no longer requires an order of possession, or a monetary order to recover February 2021 rent. He stated that he still requires a monetary order to recover March, April, May, and June rent (\$9,100), an order that he may retain the security deposit, and an order that he may recover his filing fee (\$100).

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$9,100;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 4, 2020. Monthly rent was \$2,275.00. The tenant paid the landlord a security deposit of \$1,137.50, which the landlord holds in trust for the tenant. As stated above, a bailiff removed the tenant from the rental unit on June 29, 2021, ending the tenancy.

The landlord testified that the tenant has failed to pay any part of the rent due for the months of February, March, April, May, or June 2021. As stated above, the landlord has already been granted a monetary order for \$2,275, relating to February 2021 rent arrears.

Analysis

I accept the landlord's undisputed testimony that:

- 1) monthly rent is \$2,275;
- 2) the tenant paid a security deposit of \$1,137.50 at the start of the tenancy;
- 3) the tenant resided in the rental unit until June 29, 2021; and
- 4) the tenant has not paid March, April, May, or June rent.

Section 26 of the Act 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.

The tenant did not pay rent when it is due, or at all, for the months of March to June 2021, inclusive. This is a breach of the tenancy agreement and of section 27 of the Act. As such, the landlord is entitled to a monetary order equal to the amount of arrears, which I calculate to be \$9,100 (\$2,275 x 4 months).

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he/she/they may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

As the tenant has already vacated the rental unit, I dismiss the landlord's application for an order of possession, without leave to reapply.

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$8,024.50, representing the following:

Description	Amount
Rent Arrears (March to June 2021)	\$9,100.00
Security Deposit Credit	-\$1,175.50
Filing Fee	\$100.00
Total	\$8,024.50

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 19, 2021

Residential Tenancy Branch