



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL, MNSD-DR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlord and his agent, J.M. attended the hearing via conference call and provided affirmed testimony. The tenant attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, the landlord's agent, J.M. clarified that a clerical error had occurred naming the landlord for his application. The landlord is M.M., not J.M. The tenant confirmed that her landlord was M.M. and not J.M. As such, the landlord's application shall be amended to reflect the proper landlord's name of M.M. and the agent as J.M.

Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on March 25, 2021. The tenant confirmed receipt of this package, but that it was not picked up by the tenant until approximately 2 weeks later. The tenant argued that the landlord did not follow the guidelines in serving the package. The tenant was asked if there was anything preventing her from responding to the landlord's application by receiving it approximately 2 weeks after it was sent. The tenant stated that there were no issues. The tenant stated that no documentary evidence was submitted on the landlord's application. I accept the affirmed evidence of both parties and find pursuant to section 71 of the Act that both parties have been sufficiently served.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 9, 2021. The landlord confirmed that no documentary evidence was submitted on the tenant's application. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to return of all or part of the security deposit?

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that the tenancy ended on December 1, 2020 and that the landlord currently holds the \$600.00 security deposit that was paid by the tenant.

The landlord seeks a monetary claim of \$1,750.00 which consists of:

\$1,250.00	Unpaid Rent, November 2020
\$400.00	Damage(s)

\$250.00	Mattress
\$150.00	Garbage Disposal

The landlord claims that the tenant failed to pay rent of \$1,250.00 for November 2020. Both parties confirmed the tenancy ended on December 1, 2020 when the tenant moved out. The tenant confirmed that November rent was not paid stating that she was owed compensation by the landlord. The tenant stated that compensation was owed for the landlord ending the tenancy. However, the tenant failed to provide any evidence of owed compensation during the hearing. The tenant repeatedly argued that no eviction notice was given and the tenant did not give notice to end the tenancy.

The landlord claims that the tenant vacated the rental unit taking a mattress that did not belong to the tenant. The landlord clarified that the mattress was provided as part of the tenancy. The landlord stated that the \$250.00 claim is based upon a verbal quotation obtained over the telephone from a big box store. The landlord confirmed that no mattress has been purchased yet as a replacement. The tenant disputes the landlord's claim arguing that at the start of the tenancy she was told by the landlord "throw out yours and keep mine". The tenant interpreted this as the landlord giving the mattress to the tenant. The landlord disputed the tenant's claim arguing that at no time was the mattress given to the tenant. The landlord argues that the tenancy included the mattress.

The landlord also seeks a claim of \$150.00 for garbage disposal costs. The landlord stated that the tenant vacated the rental unit leaving garbage behind that the landlord was forced to remove at a cost of \$150.00. The tenant argues that the landlord had "smashed/wrecked" her personal belongings and as a result the tenant stated that she was not going to remove the garbage and should not be responsible for it. The landlord confirmed that no invoice/receipt or proof of payment was submitted for this claim.

The tenant seeks return of the \$600.00 security deposit. In this claim both parties confirmed that the tenancy ended on December 1, 2021 and that the landlord holds the tenant's \$600.00 security deposit.

The tenant stated that her forwarding address in writing requesting the return of the security deposit was provided to the landlord sometime in March 2021. The landlord disputes this claim arguing that at no time was the landlord served with a written request requesting the security deposit and providing the tenant's forwarding address. The landlord stated that she has only received the tenant's previous notice of hearing package and application. The tenant argues that many forms were filled out and

provided to the Residential Tenancy Branch as part of her evidence submission, however the tenant was unable to refer to that particular evidence file.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of both parties and find that the landlord has established a claim for unpaid rent of \$1,250.00 for November 2030. Despite the tenant arguing that she was due compensation, the tenant failed to provide any supporting evidence of owed compensation or a right to withhold rent from the landlord.

On the landlord's claim for \$400.00 consisting of \$250.00 for a mattress and \$150.00 for garbage disposal, I find that the landlord has failed to provide sufficient evidence to satisfy me of this claim. Despite the tenant confirming that she took a mattress and did leave garbage behind, the landlord's monetary claim amount is without supporting evidence. No invoices/receipts/estimates were provided. This portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$1,250.00. The landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$600.00 security deposit in partial satisfaction of this claim and grant a monetary order to the landlord for the difference of \$750.00.

Despite the tenant's application for return of the \$600.00 security deposit, I find that the tenant has failed to provide sufficient evidence of providing her forwarding address in writing to the landlord for return of the security deposit. An extensive review was conducted of the tenant's 69 documentary evidence files, however the Arbitrator was only able to locate page 1 out of 2 of an RTB-47 form named as "PAGE_1_OF_FORM" that is dated March 2, 2021, but when reviewing "page_2_of_form" in reference to RTB-

47 it shows a photograph of page 1 out of 2 of the RTB047 form undated. Another file named "rtb41form" a proof of service document was also found but incomplete showing only page 2 of 2 only. The tenant was unable to provide any further details of any supporting evidence.

Conclusion

The landlord is granted a monetary order for \$750.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: August 26, 2021

Residential Tenancy Branch