



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution, filed by the Landlord on May 6, 2021, in which the Landlord requested an Order of Possession and monetary compensation based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on February 3, 2021 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The Application was scheduled for teleconference at 11:00 a.m. on September 14, 2021. Only the Landlord's Rental Property Manager, J.K. ("Landlord's Agent") called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

As the Tenant failed to call into the hearing, I considered service of the Landlord's Application materials. The Landlord Agent testified that he served the Tenant with the Notice of Hearing and their Application on May 21, 2021 by registered mail. Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of May 26, 2021 and I proceeded with the hearing in their absence.

The Landlord's Agent was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. He confirmed his understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's Agent's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord's Agent confirmed the Tenant vacated the rental unit on or about May 26, 2021 such that an Order of Possession was no longer required. I therefore dismiss this claim without leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Should the Landlord be authorized to retain the Tenant's security deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee paid for this Application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which confirmed the following. The tenancy began July 7, 2020. Monthly rent was payable in the amount of \$3,500.00 and the Tenant paid a security deposit in the amount of \$1,750.00 which the Landlord continues to hold in trust for the Tenant.

The Tenant failed to pay the \$200.00 move in fee and failed to pay the full amount of rent for the months of December 2020, January 2021 and February 2021 following which the Landlord issued the Notice. The Landlord's agent testified that the Notice was personally served on the Tenant on February 3, 2021.

The Landlord's Agent testified that the Tenant applied to dispute the Notice but failed to attend the hearing on May 18, 2021 such that the Application was dismissed, and the Landlord was granted an Order of Possession. (The file number for that matter is included on the unpublished cover page of this my Decision.)

The Landlord's Agent testified that the following remains outstanding as of the time of the hearing:

Move in fee	\$200.00
Rent for December 7 to January 7	\$250.00
Rent for January 2021	\$3,500.00
Rent for February 2021	\$3,500.00
Rent for March 2021	\$3,500.00
Rent for April 2021	\$3,500.00
Rent for May 2021	\$3,500.00
TOTAL	\$17,950.00
Less payment on May 12, 2021	\$1,750.00
TOTAL OUSTANDING	\$16,200.00

Analysis

Based on the above, the Landlord's Agent's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I find the Tenant is responsible for paying the \$200.00 move in fee as per clause 9 of the Addendum to the residential tenancy agreement. I accept the Landlord's Agent's testimony that this fee was not paid by the Tenant and I therefore award the Landlord recover of the **\$200.00** claimed.

Under section 26 of the *Act*, a Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenant had no authority under the *Act* to not pay rent. I accept the Landlord's evidence that the Tenant failed to pay **\$17,750.00** in rent from December 7, 2020 to May 2021 and I award the Landlord recovery of this sum.

As the Landlord has been successful in this Application, I also award the Landlord recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

I authorize the Landlord to retain the Tenant's security deposit of \$1,750.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due of **\$14,450.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Landlord's request for an Order of Possession is dismissed without leave to reapply as the Tenant has vacated the rental unit. The Landlord is entitled to monetary compensation in the amount of \$16,200.00 from the Tenant. The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order in the amount of **\$14,450.00** for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 15, 2021

Residential Tenancy Branch