



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the Act”).

On March 31, 2021, the Landlords filed an application requesting a monetary order to recover unpaid rent; to keep a security deposit; and to recover the cost of the filing fee.

On April 8, 2021, the Tenant filed an application for the return of the security deposit, and to recover the cost of the filing fee.

The Landlords and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

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

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to keep the security deposit towards unpaid rent?
- Is the Tenant entitled to the return of a security deposit?

Background and Evidence

The Parties testified that the tenancy began on August 1, 2017 as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. At the end of the tenancy, rent in the amount of \$3,075.00 was due to be paid to the Landlords by the first day of each month. The Tenant paid the Landlords a security deposit of \$1,500.00. The Landlords and Tenant provided a copy of the tenancy agreement.

The Tenant stated that at the start of the tenancy he paid the Landlord the first months rent, and the last months rent, and also paid a \$1,500.00 security deposit.

The Landlords and Tenant testified that the Tenant moved out of the rental unit on June 5, 2020.

Unpaid Rent

The Landlords are seeking a monetary order in the amount of \$1,000.00 for unpaid March 2020 rent and \$512.00 for five days of pro-rated rent for June 2020.

The Landlords testified that they previously participated with the Tenant in a dispute resolution hearing, and they were granted an order of possession based on issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 17, 2020. The Landlords provided a copy of a May 19, 2020 Decision where the Arbitrator writes:

"The tenant confirmed that they have withheld the amount of \$1,500.00 from March 2020 rent...

I find that the tenant was obligated to pay the full rent in the amount of \$3,075.00 on March 1, 2020 and failed to do so."

The Landlord testified that the Tenant has not paid all the rent owing under the tenancy agreement for March 2020 and the Tenant did not pay any rent for five days of June 2020.

In response, the Tenant provided testimony confirming that he did not pay the Landlord the remaining rent owing under the tenancy agreement for March 2020. The Tenant also testified that he vacated the rental unit on June 5, 2020 and he did not pay any rent to the Landlords for the five days in June 2020.

Security Deposit

On March 31, 2021, the Landlords applied for dispute resolution and made a claim to keep the \$1,500.00 security deposit in partial satisfaction of their claim for unpaid rent.

The Landlord testified that they also sent the Tenant a payment of \$298.00 on March 2, 2021 in relation to the previous hearing where the Arbitrator awarded \$312.00 compensation to the Tenant.

Tenants Application

On April 8, 2021, the Tenant applied for dispute resolution seeking a monetary order for the return of double the security deposit.

The Tenant explain his monetary claim as follows: The Tenant submitted that the tenancy agreement provides that a security deposit must not exceed a half month of rent under the agreement. The Tenant submitted that if a Landlord does not comply with that section of the tenancy agreement, the Landlord must pay the Tenant double the amount of the security deposit. Tenant stated that because he paid the Landlord \$4,500.00 at the start of the tenancy which is comprised of the last months rent and the \$1,500.00 security deposit, the Landlord accepted a deposit exceeding half a months rent, and the Landlord is obligated to pay him \$9,000.00.

The Tenant then explained that since he incrementally deducted the prepayment of \$3,000.00 from rent owing to the Landlords over a number of months, the amount the Landlords owe him is reduced to \$6,000.00. The Tenant submitted that since the Landlords did not return the security deposit to him within the required time period, the Landlords must pay him double the amount of the deposits, which is \$12,000.00.

The Tenant testified that other than the payment of \$298.00 he received from the Landlords in March 2021 related to a previous hearing, he has not received any amount of the security deposit from the Landlords.

The Tenant testified that there was no written agreement permitting the Landlords to keep any amount of the security deposit.

The Tenant testified that he provided his forwarding address in writing to the Landlord on two occasions. The Tenant testified that he sent his address to the Landlord using email in August 2020 and sent it again on February 20, 2021 using registered mail sent to the Landlords' address.

In reply, the Landlords testified that they believe they reached a written agreement in June 2020 that the Landlord could keep \$512.00 of the security deposit to cover unpaid June 2020 rent.

The Landlords provided testimony confirming that they did receive the Tenant's forwarding address on February 26, 2021.

Analysis

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 72 of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, in the case of payment from a tenant to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

Rent

I find that the Tenant failed to pay all the rent owing under the tenancy agreement for March 2020 to the Landlords. I find that the Tenant owes the Landlords \$1,000.00 for March 2020 rent.

I find that the tenancy ended on June 5, 2020 when the Tenant vacated the rental unit. I find that the Tenant owes the Landlords pro-rated rent of \$512.00 for the five days of June 2020.

I award the Landlord the amount of \$1,512.00 for unpaid March 2020 and June 2020 rent.

Security Deposit

I find that the Landlords received the Tenant's forwarding address on February 26, 2021. The Landlord applied for dispute resolution and made a claim against the security deposit on March 31, 2021. I find that the Landlords did not apply against the security deposit within 15 days of when they received the Tenant's forwarding address.

I find that pursuant to section 38(6) of the Act, the Landlords owe the Tenant \$3,000.00 which is double the amount of the \$1,500.00 security deposit.

I find that the last months' rent payment of \$3,000.00 paid to the Landlord at the start of the tenancy is not a security deposit, it was a rent overpayment. Section 43(5) of the Act provides that in cases of overpayment the tenant may deduct the increase from rent or otherwise recover the increase. I find that the Tenant did incrementally deduct the rent overpayment from the rent owing over a number of months.

In addition, section 4(3) of the tenancy agreement relied on by the Tenant does not accurately reflect the Act and Regulation. The tenancy agreement provided by the parties is missing important information in section 4(3). This section of the tenancy agreement cites subsection (1) but should cite subsection (1)(c). Section 4(1)(c) provides that a landlord must repay a security deposit to the tenant within 15 days of the end of the tenancy agreement unless, the landlord applies for dispute resolution within 15 days or if there is an agreement in writing allowing the Landlord to keep the deposit. A landlord is not required to pay double the amount of a security deposit if prepaid rent is collected.

An accurate copy of a Residential Tenancy Agreement form RTB-1 is available for download on the RTB website.

I find that the Landlord did not have a written agreement with the Tenant that they could keep \$512.00 from the security deposit. Upon review of the email evidence, I find that

the Tenant stated that he agreed his account was charged, but I note that he did not state that the amount could be withheld from his security deposit. The Tenant writes: *"You do not have my permission or authority to do this."*

As to the recovery of the filing fees that the parties paid for the applications for dispute resolution, since both parties were successful with their claims, I decline to award the cost of filing fees.

The Landlord established a monetary award in the amount of \$1,512.00 for unpaid rent. The Tenant established a monetary award of \$3,000.00 for double the amount of the security deposit.

After deducting the amount of the Landlords award of \$1,512.00 from the amount owing to the Tenant, I find that the Landlords owe the Tenant a balance of \$1,488.00.

I grant the Tenant a monetary order for the balance of \$1,488.00. This monetary order must be served on the Landlords and may be enforced in Provincial Court.

The monetary amount of \$310.00 granted to the Tenant in an earlier hearing for a loss of value in the tenancy is separate issue from this proceeding and is not calculated in my Decision. It appears that the Landlord has paid the Tenant \$298.00 of the \$310.00 that was ordered by the Arbitrator.

Conclusion

The Tenant failed to pay all the rent owing under the tenancy agreement for the month of March 2020 and June 2020. The Tenant owes the Landlord \$1,512.00 for unpaid rent.

The Landlords failed to apply against the \$1,500.00 security deposit within 15 days of receiving the Tenant's forwarding address and must pay the Tenant \$3,000.00 which is double the amount of the security deposit.

After deducting the amount of the Landlords award of \$1,512.00 from the amount of \$3,000.00 owing to the Tenant, I find that the Landlords owe the Tenant a balance of \$1,488.00.

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: September 16, 2021

Residential Tenancy Branch