



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Retention of the Tenant’s security deposit.

The hearing was convened by telephone conference call and was attended by the agent for Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Tenant was sent a copy of the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Application and the Notice of Hearing, as well as the documentary evidence before me for consideration, by registered mail on April 26, 2021. The Agent stated that the address used for the registered mail was the forwarding address provided by the Tenant on the move-out condition inspection report and subsequently confirmed by email on April 7, 2021. Copies of the registered mail receipt, which includes the tracking number, the registered mail tracking record, the move-out condition inspection report containing the forwarding

address for the Tenant, and the confirmation email were submitted for my review in support of the Agent's testimony.

The Canada Post tracking record shows that the registered mail was sent on April 26, 2021, that a notice card was left on April 29, 2021, and that the registered mail was delivered and signed for on May 3, 2021. Branch records show that the Notice of Dispute Resolution Proceeding Package was made available to the Landlord, by email, on April 23, 2021.

As a result of the above, in the absence of any evidence or testimony to the contrary, and pursuant to sections 89 and 90 of the *Act*, I find that the Tenant was deemed served with the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord on May 1, 2021, five days after they were sent to them by registered mail. I am also satisfied that the Tenant received and signed for the registered mail two days later, on May 3, 2021.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. As the Agent and I attended the hearing on time and ready to proceed, I am satisfied that the Tenant received notice of the hearing and a copy of the Application as required by the *Act*, and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 1:30 P.M. on October 19, 2021. Although the line remained open for 17 minutes, the full duration of the hearing, neither the Tenant nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to the Landlord at the email address listed for them on the Application.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to a compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit?

Background and Evidence

The Agent testified that the one-year fixed-term tenancy began on April 1, 2020, at a monthly rent amount of \$1,635.00, and that rent was due on the first day of each month. The Agent stated that a security deposit in the amount of \$817.50 was paid, which the Landlord still holds, and that the tenancy agreement allows for a \$25.00 late rent fee. The Agent stated that in addition to the above noted rent, the Tenant owed \$125.00 per month for parking. Copies of the tenancy agreement and parking agreement were submitted for my review and consideration.

The Agent stated that the Tenant moved out at the end of March 2021, the end of the fixed-term tenancy agreement, without giving one month's written notice as required by the *Act*. The Agent stated that although the Tenant returned on April 1, 2021, to complete the move-out condition inspection report, they did not pay rent for April 2021, and that the Landlord only became aware that the Tenant had vacated the rental unit, as the Tenant verbally communicated their intention to vacate the rental unit to a building manager shortly before vacating. The Agent stated that move-in and move-out condition inspections and reports were completed with the Tenant as required by the *Act*, and that copies of these reports were provided to the Tenant in accordance with the *Act* and regulation. Copies of the move-in and move-out condition inspection reports were submitted for my review and consideration. The Agent stated that the Tenant provided their forwarding address in writing on April 1, 2021, by placing it on the move-out condition inspection report and subsequently confirmed that this address was correct by email on April 7, 2021. Copies of the condition inspection reports, and the confirmation email were submitted by the Landlord.

The Agent stated that at the time the tenancy ended, the Tenant owed \$625.00 in outstanding parking fees, which the Landlord seeks to recover as part of this Application. A copy of a letter to the Tenant dated September 25, 2020, advising them of this debt was submitted for my review. The Agent also sought recovery of \$1,635.00 in rent for April 2021, as the Tenant had not provided proper notice under the *Act* to end their tenancy, and a \$25.00 late rent fee for April 2021. A rent ledger and a monetary order worksheet were submitted in support of these amounts. Finally, the

Agent sought recovery of the \$100.00 filing fee and authorization to without the \$817.00 security deposit towards any amounts owed.

Neither the Tenant nor an agent acting on their behalf attend the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy and parking agreements in the documentary evidence before me.

Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Section 45(4) states that a notice to end tenancy given under this section must comply with section 52 of the *Act*, which requires, among other things, that the notice be in writing.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation, or tenancy agreement the non-complying party must compensate the other for the damage or loss that results.

Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that the Tenant breached section 45(2) of the *Act*, when they ended their fixed term tenancy without having first given proper written notice to do so. I am also satisfied that:

- The Tenant owes the amounts sought by the Landlord for rent, a late fee, and parking fees.
- The Tenant provided the Landlord with the forwarding address in writing on April 1, 2021;
- The Landlord filed their Application seeking retention of the Tenant's security deposit within the time limit set out in section 38(1) of the *Act*; and
- The Landlord did not extinguish their right under the *Act* to bring such an Application.

As a result, I therefore award the Landlord the \$2,285.00 sought. As the Landlord was successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to retain the Tenant's \$817.50 security deposit towards the above noted amounts owed. Pursuant to section 67 of the *Act*, I therefore grant the Landlord a Monetary Order in the amount of \$1,567.50, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,567.50. The Landlord is provided with this Order in the above terms and the Tenant 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 *Act*.

Dated: October 19, 2021

Residential Tenancy Branch