



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 was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), a monetary order for unpaid rent of \$1,690.00, amended in the hearing to \$706.18; for a monetary order for damage or compensation under the Act of \$25.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, K.M., and an agent for the Landlord, S.D. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant noted that the Landlord failed to serve her with an amendment of the amount claimed; however, the Tenant could not explain how she was prejudiced by the Landlord unexpectedly reducing the amount claimed. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the assigned tenancy began on January 1, 2021, with a monthly rent of \$1,690.00, due on the first day of each month. The Parties agreed that the original tenant paid the Landlord a security deposit of \$882.50, and a pet damage deposit, though the Agent did not specify the amount. However, the Agent confirmed that the Landlord returned the pet damage deposit to the original tenant, and still holds the original tenant's security deposit, which was transferred to the assigned tenancy for the use of the Tenant, K.M.

#1 OUTSTANDING RENT OWING → \$706.18

In the hearing, the Agent said that the Landlord's first claim is for half a month's rent, because the Tenant failed to give sufficient notice to end the tenancy, and the Landlord could not find a new tenant until midway through the month after the tenancy ended.

In the hearing, the Agent said:

The tenant notified us around April 23 that she'd be vacating at the end of April, but we require a full month's notice. We sent her a letter on April 23rd explaining that it's an improper notice and that she'd be required to give a full month's notice.

On April 30th we did the outgoing inspection, which she signed. Her rent she owed in May, they charged her a not sufficient funds fee ("NSF") for April's rent that she was responsible for. The Resident manager was to find a tenant, and they moved in on the 15th of May, that's why we're asking for half a month's rent.

The Tenant said:

I gave my notice to move out on April 4th or 5th through email. And the reason was because they didn't use the cheque that the church gave to them on February 27 for my March rent. They didn't use it for two months, and as soon as they did, I put in my reason for moving out.

I didn't dispute that I didn't give a month's notice, but I gave a pretty significant amount of time - from the 5th was my amount of time. . . I was busy trying to round up the money I owed them for not using the cheque again.

In answer to my question about how the Landlord advertised for a new tenant, once they received the Tenant's notice, the Agent said:

We put it all over through the media – [online advertising platforms] – there's about five different platforms they advertise on; as well, we have our own website that advertises vacancies.

The Tenant said she did not have any comments on the Landlord's procedure for finding a new tenant for the rental unit.

#2 INSUFFICIENT FUNDS CHARGE → \$25.00

The Agent said that the Landlord's second claim is because the Tenant's cheque for April 2021 was returned from the bank on April 5 for insufficient funds. The Agent said that the Landlord charges \$25.00 for these charges. However, the Agent said that in this case, the Landlord is willing to waive the NSF fee they typically charge. Therefore, this claim is **dismissed without leave to reapply**.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out the burden of proof in this proceeding:

Rule 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As set out in Policy Guideline #16: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

#1 OUTSTANDING RENT OWING → \$706.18

According to section 45 (1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

45 (1) (a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

. . .

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Accordingly, by giving notice of the end of the tenancy on April 4 or 5, 2021, the effective date for this notice should have been May 31, 2021. According to the Act, if the Tenant had intended the tenancy to end on April 30, 2021, the Landlord should have received her notice to end the tenancy by March 31, 2021 at the latest. In addition, and for your information, when a document is served by email, it is deemed served three days later, pursuant to section 90 of the Act and section 44 of the Regulation.

Further, according to sections 45 and 52 of the Act, in order for a notice to end tenancy from a tenant to be effective, the form and content must be in writing and must:

- a) Be signed and dated by the Party giving the notice,
- b) Give the address of the rental unit, and
- c) State the effective date of the Notice.

In this case, the Tenant acknowledged that she emailed her notice to end tenancy to the Landlord on April 4 or 5, 2021, both of which were too late, pursuant to the Act. As a result, the Tenant was responsible for May's rent, as well, for which the Landlord is claiming only half a month's rent or \$706.18.

I find the Landlord made sufficient efforts to find a new tenant for the rental unit as soon as possible, and I find that they were successful in finding a tenant for May 15, 2021.

While I note that \$706.18 is less than half of the rent for the rental unit, this is the amount the Agent said they sought from the Tenant in this matter. Accordingly, and pursuant to sections 45 and 67 of the Act, I award the Landlord with **\$706.18** from the Tenant for half a month of unpaid rent in May 2021.

#2 INSUFFICIENT FUNDS CHARGE → \$25.00

The Agent said that the Landlord waived this claim from their Application; therefore, it was **dismissed without leave to reapply**.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$882.50.00 in complete satisfaction of the Landlord's monetary awards.

Given their success in this matter, I also award the Landlord with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

Amount awarded:

Unpaid rent	\$706.18
Filing fee	<u>100.00</u>
TOTAL	<u>\$806.18</u>

I authorize the Landlord to retain \$806.18 of the Tenant's security deposit and return the remaining \$76.32 to the Tenant, as soon as possible. I grant the Tenant a Monetary Order for **\$76.32** from the Landlord, as reimbursement of the Tenant's remaining security deposit, pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord is successful in this Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord has waived or withdrawn their application for recovery of a \$25.00 fee for an NSF cheque; therefore, that claim is dismissed without leave to reapply.

The Landlord is awarded **\$706.18** from the Tenant for unpaid rent flowing from an insufficient notice to end tenancy issued by the Tenant. The Landlord is also awarded recovery of the **\$100.00** Application filing fee from the Tenant. The Landlord is authorized to retain **\$806.18** from the Tenant's \$882.50 security deposit in complete satisfaction of these awards. The Landlord is Ordered to return the remaining **\$76.32** of the security deposit to the Tenant as soon as possible.

I grant the Tenant a **Monetary Order** from the Landlord of **\$76.32**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless 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: November 08, 2021

Residential Tenancy Branch