



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Recovery of the filing fee from the opposing party.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by CL ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified she sent the tenant the Notice of Dispute Resolution Proceedings package by registered mail on October 19, 2021. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that it was sent to the tenant's forwarding address, as listed on the condition inspection report done when the tenant moved out. Pursuant to sections 89 and 90 of the *Act*, the tenant is deemed served with the Notice of Dispute Resolution Proceedings package on October 24th, five days after it was sent by registered mail.

This hearing was conducted in the absence of the tenant in accordance with Rule 7.3 of the Residential Tenancy Branch rules of procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on April 1, 2020 with rent set at \$1,150.00 per month payable on the first day of each month. A security deposit of \$575.00 was collected from the tenant at the commencement of the tenancy which the landlord continues to hold. The tenant failed to pay rent on February 1, 2021 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 4th. The tenant advised the landlord that he accepted the tenancy would end and agreed to vacate the rental unit on February 18th.

On February 18th, the parties conducted a condition inspection report, and the tenant provided his forwarding address. On the report, the tenant agreed that his security deposit could be used to offset his outstanding February rent and to pay for suite cleaning at \$140.00. The landlord testified she paid an outside company to clean the suite, however the landlord neglected to provide their invoice. A copy of the condition inspection report was provided in the landlord's evidence package and on the report, the tenant agrees to compensate the landlord for the cleaning and for the February rent, a total of \$690.00 after deducting the security deposit.

The landlord sought an amendment to her claim during the hearing. The landlord testified the tenant should not have been charged the entire month of February, since he moved out on February 18th. The landlord sought to change her application to seek only the pro-rated daily rent for the 18 days, calculated at $[\$1,150.00 / 28 \text{ (days)} \times 18 = \$739.28]$.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts

occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Based on the undisputed testimony of the landlord, I am satisfied the tenant failed to pay rent for the first 18 days of February, contrary to section 26 of the *Act*. I find the landlord is entitled to compensation for those 18 days in the amount of **\$739.28**. I find that on the condition inspection report, the tenant agreed to the landlord's claim to be compensated at \$140.00 for suite cleaning. Based on the landlord's undisputed testimony, I accept that she paid that amount to have the unit cleaned and pursuant to section 67, I award the landlord an additional **\$140.00**.

The landlord's claim was successful, and the landlord is entitled to recover the **\$100.00** filing fee. The landlord continues to hold the tenant's security deposit of \$575.00. In accordance with the offsetting provisions of section 72, the landlord may retain the tenant's entire security deposit in partial satisfaction of the monetary order.

Item	amount
18 days rent for February 2021	\$739.28
Cleaning fees, as agreed by the tenant	\$140.00
Filing fee	\$100.00
Less security deposit	(\$575.00)
Total	\$404.28

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$404.28**.

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: November 08, 2021

Residential Tenancy Branch