



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant was served with the notice of hearing package and all of the submitted documentary evidence via email on June 24, 2021 as a result of an application for substitute service via email which was granted. The landlord submitted as proof of service via email a screenshot copy of a "service" called "mailtrack" which confirmed that the tenant opened and read the email on June 25, 2021 at 6:27:56pm. I accept the undisputed affirmed evidence of the landlord and find that the landlord has sufficiently served the tenant with the notice of hearing package and the submitted documentary evidence via email on June 24, 2021. Despite the landlord's proof of service, I find that the tenant is deemed served 3 days later on June 27, 2021 as per sections 88 and 89 of the Act.

During the hearing the landlord clarified that he is seeking unpaid rent and compensation totalling \$4,950.0 and recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$5,050.00 which consists of:

\$4,950.00	\$4,500.00	Unpaid Rent, May 2020, June, 2020, August 2020 and November 2020
	\$300.00	Strata Bylaw Fine
	\$50.00	Lost Parking Pass Fee
	\$100.00	Move-Out Fee
\$100.00		Filing Fee

The landlord stated that the tenant owed rent of \$4,500.00 which began in May 2020 for \$1,000.00; June 2020 for \$1,500.00; August 2020 for \$1,000.00; and \$1,000.00 for November 2020.

The landlord stated that the tenant incurred a strata bylaw fine for a noise violation and was assessed a fine by the strata for \$300.00.

The landlord stated that the tenant lost a parking pass which was never returned and required a cost of \$50.00 for the replacement fee set by the strata.

The landlord stated that the tenant failed to pay a move-out fee of \$100.00 set by the strata.

The landlord stated that as part of the signed tenancy agreement an addendum was agreed to which the tenant had agreed:

“All fines levied by the strata council on the unit for tenant activity within the premise or within common areas”

“The tenant agrees to pay the following fees:

- 1) \$100 move-in
- 2) \$100 move-out fee”

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed affirmed evidence of the landlord and find that the tenant failed to pay rent of \$4,500.00 total for the months, May 2020 of \$1,000.00, June 2020 of \$1,500.00, August 2020 of \$1,000.00 and \$1,000.00 for November 2020. I also accept the undisputed affirmed evidence of the landlord that the tenant incurred a \$300.00 strata fine for excessive noise; lost a parking pass which required a fee of \$50.00 to replace; and failed to pay the \$100.00 move-out fee after moving out. On all these claims I find on a balance of probabilities that the landlord has established a claim for the total of \$4,950.00.

The landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord despite filing a request to offset the monetary claim against the security and pet damage deposits, failed to present any evidence regarding the two deposits. On this basis, I decline to make any orders regarding the landlord's request to offset the claim against the combined deposits. However, I note that section 72 (2) of the *Act* states in part,

If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Conclusion

The landlord is granted a monetary order for \$5,050.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 *Residential Tenancy Act*.

Dated: November 22, 2021

Residential Tenancy Branch