



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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"), for a monetary order of \$510.00 for damage or compensation for damage under the Act, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on May 13, 2021. The Landlord provided the Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

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 the Parties 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 Landlord submitted a copy of the periodic tenancy agreement that began on November 12, 2020, with a monthly rent of \$680.00, due on the first day of each month. The Landlord said that the Tenant paid her a security deposit of \$340.00, and no pet damage deposit. The Landlord explained that the Tenant had rented a room in the residential property, and that she does not live at that property.

In the hearing, the Landlord said the Tenant moved in on November 12, 2020, but on November 20, he texted her that he would be moving out at the end of the month. The Landlord said she told the Tenant that he had to give her one month's notice of his intent to vacate the unit, but she said he just left and did not pay her any rent for December 2020.

The Landlord gave evidence of having advertised the room for a new tenant in December, but she said she was not able to find anyone on such short notice.

To complicate things, the monthly rent is \$680.00, but since the Tenant moved in on November 12, he negotiated a lower rent for that month of \$430.00. However, the Tenant had already paid the Landlord \$600.00 before he moved in and negotiated the reduction. The Landlord said that the Parties agreed that the Landlord would reduce his rent in December by the \$170.00 difference between the \$600.00 he paid for

November, and the \$340.00 they agreed he would pay for that month only. As such, the Landlord and the Tenant agreed that the Tenant would pay her \$510.00 for December 2020 rent, to compensate him for the \$170.00 extra he had paid for November 2020.

The Landlord seeks \$510.00 in unpaid rent for December 2020, and the \$100.00 Application filing fee from the Tenant.

The Landlord said the Parties had a previous hearing on April 22, 2021, after the Tenant had applied for the return of his security deposit. However, the Arbitrator determined that the Tenant had not provided the Landlord with his forwarding address in writing, pursuant to section 38 of the Act.

Analysis

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

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:

- (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.

Accordingly, by giving notice of the end of the tenancy on November 20, 2020, the effective date for this notice should have been December 31, not November 30, 2020.

Section 53 (2) of the Act states that if the effective date of the notice given by a tenant is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. As a result, I find that the effective date in this situation is December 31, 2020.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to

sections 26, 45, and 67 of the Act, I award the Landlord with **\$510.00** from the Tenant in recovery of the unpaid rent.

Given her success, the Landlord is also awarded recovery of the **\$100.00** Application filing fee from the Tenant pursuant to section 72, for a total award of \$610.00.

The Landlord is authorized to retain the Tenant's **\$340.00** security deposit in partial satisfaction of the award. I grant the Landlord a Monetary Order of **\$270.00** from the Tenant for the balance of the award owing, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in her Application, as she provided sufficient evidence that the Tenant owes her \$510.00 in rent arrears for having given insufficient notice to end the tenancy. The Landlord is also awarded the \$100.00 Application filing fee.

The Landlord is authorized to retain the Tenant's \$340.00 security deposit in partial satisfaction of the monetary awards. I grant the Landlord a **Monetary Order** for **\$270.00** for the remainder owing by the Tenant to the Landlord in this proceeding.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) 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 01, 2021

Residential Tenancy Branch