



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-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 pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials by registered mail on July 6, 2021. The tenant has not submitted any evidence. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue-Adjournment

At the outset of the hearing the tenant requested the matter be adjourned so that they can prepare and submit documentary evidence. The landlord opposed the tenant's request.

The tenant submits that while they were served with the landlord's application and materials in July 2021 they have not had an opportunity to prepare evidentiary materials or to serve them as they have been without housing.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the tenant has provided little evidence in support of their request for an adjournment and failed to provide a cogent explanation as to why they have been unable to either prepare evidentiary materials they intend to rely upon or seek an adjournment prior to the hearing date.

The tenant made reference to applications they intend to file as against the landlord and the need for an adjournment appears to be solely related to the tenant's desire to file a separate monetary claim. The tenant testified that the evidence they feel is necessary to gather is solely related to their potential claim and has no bearing on the matter at hand.

Under the circumstances I find that the tenant has not met the criteria established for granting an adjournment. I find no prejudice to the parties to proceed with the hearing as scheduled and no potential issues of procedural fairness or natural justice. Consequently, I deny the tenant's application for an adjournment.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain all or a portion of the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The security deposit for this tenancy is \$729.50 and is still held by the landlord. The tenancy ended on May 27, 2021 and the tenant provided a forwarding address in writing on that date on the move-out condition inspection report.

There was a previous decision and order regarding this tenancy under the file numbers on the first page of this decision. In that earlier decision dated May 19, 2021 the landlord was given a monetary award in the amount of \$4,347.59 representing rental arrear at that time. The decision is silent as to the disposition of the security deposit for this tenancy.

The landlord now seeks an order for authorization to retain the security deposit to apply against the earlier monetary order.

Analysis

Section 38 of the *Act* requires the landlord to file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the matter at hand the tenant provided their forwarding address on May 27, 2021 and the landlord filed their application on June 9, 2021. Accordingly, I find the landlord was within their statutory timeline to file an application for authorization to retain the deposit.

The parties agree that there is a valid monetary order in the amount of \$4,347.59 issued on May 19, 2021. While the parties disagree on whether some partial payments have been made against that monetary order both parties agree that at least \$3,590.59 remains outstanding as at the date of the hearing.

Section 38(3) provides that:

- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.

Accordingly, I find that the landlord is authorized under the *Act* to retain the security deposit in partial payment of the earlier monetary award.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, of the \$729.50 security deposit for this tenancy, I allow the landlord to retain \$100.00 of that deposit in full satisfaction of this monetary award.

Conclusion

The landlord is authorized to retain the full amount of the security deposit for this tenancy of which \$100.00 is in full satisfaction of the present monetary award and the balance of \$629.50 may be applied against the monetary order of May 19, 2021.

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: December 7, 2021

Residential Tenancy Branch