



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on August 23, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- A Monetary Order for outstanding rent;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit towards any amounts owed.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over myself or other parties and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Application and the Notice of Hearing, along with all of the documentary evidence before me from the Landlord, was sent to the Tenant by email on September 11, 2021, at the email address for the Tenant agreed to for the purpose of the service of documents related to the tenancy via text message on September 10, 2021. As there is no evidence before me to the contrary, I accept the Landlord's affirmed testimony that on September 10, 2021, the Landlord and Tenant agreed via text message that the Tenant could be served documents related to the tenancy by email at the email address provided by the Landlord at the hearing. I have recorded the email address provided by the Landlord for the Tenant on the cover page for this decision. I also accept that the above noted documents were sent to the Tenant at that email address the following day, September 11, 2021.

Residential Tenancy Branch (Branch) records indicate that the Notice of Dispute Resolution Proceeding Package, which contains the Application and the Notice of Hearing, were emailed to the Landlord at their request, on September 9, 2021, for service by September 13, 2021. Based on the uncontested and affirmed testimony above, I therefore find that the Tenant was deemed served with the Application, the Notice of Hearing, and the documentary evidence before me for consideration from the Landlord, in accordance with the *Act*, *regulation*, and the Rules of Procedure, on September 14, 2021, pursuant to sections 88 and 89 of the *Act* and section 43 of the *regulation*.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided by them in the Application.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing, I identified that the Applicant named as the Landlord in the Application was not the same as the Landlord named in the tenancy agreement. The Applicant (D.S.) stated that the landlord named in the tenancy agreement (G.P.) is the former general manager for the rental unit, which is owned by a limited partnership corporation, and that as they are the new general manager for the owner, they are therefore the new landlord.

As there is no evidence before me to the contrary, I accept D.S.' affirmed testimony that they are the new general manager for the rental unit and authorized to act on behalf of the owner of the rental unit. As the definition of a landlord under section 1 of the *Act* includes the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act*, the tenancy agreement, or a service agreement, I therefore find that G.S. meets the definition of a landlord under the *Act*. I have therefore referred to them as the "Landlord" throughout the decision and any related orders.

Preliminary Matter #2

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, the Application may be amended at the hearing. At the hearing the Landlord stated that the Tenant now owes two months of outstanding rent; the \$2,800.00 owed for July as claimed in the Application and the 10 Day Notice, plus \$2,800.00 for the following month of August. The Application was therefore amended pursuant to rule 4.2 of the Rules of Procedure to include the additional rent owing for August 2021.

Preliminary Matter #3

The Landlord stated that the Tenant vacated the rental unit on September 1, 2021, and therefore an Order of Possession is no longer required. The hearing therefore proceeded on the basis of the Landlord's claim for outstanding rent, recovery of the filing fee, and authorization to withhold the security deposit against any amounts owed.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for outstanding rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit towards any amounts owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy started on April 1, 2021, and was set to end on November 30, 2021, after which time the tenancy would continue on a month to month basis. The tenancy agreement states that rent in the amount of \$2,800.00 is due on the first day of each month, and that a security deposit in the amount of \$1,400.00 is to be paid. At the hearing the Landlord stated that the \$1,400.00 security deposit was paid. The Landlord stated that the Tenant caused over \$3,000.00 in damage to the rental unit, but acknowledged that there was no agreement in place with the Tenant, written or otherwise, for retention of the security deposit. The Landlord also acknowledged that there were no previous orders from the Branch for the Landlord to retain the security deposit or any outstanding monetary orders against the Tenant in the name of the Landlord at the time the tenancy ended.

The Landlord stated that the Tenant never paid rent for July 2021, and was served with the 10 Day Notice on July 28, 2021, as a result. The Landlord stated that the Tenant also did not pay rent for the following month of August 2021, and currently owes \$5,600.00 in outstanding rent for July and August of 2021. The Landlord provided copies of text messages with the Tenant regarding outstanding rent, and stated that the Tenant subsequently vacated the rental unit on September 1, 2021. The Landlord therefore sought a Monetary Order for recovery of the \$5,600.00 in outstanding rent, plus \$100.00 for the filing fee, less any amounts of the security deposit I find they are entitled to retain.

No one appeared on behalf of the Tenant to provide any evidence or testimony for consideration.

Analysis

As there is no evidence or testimony before me to the contrary, I accept that a tenancy agreement to which the *Act* applies existed between the Tenant and the Landlord, as stated in the tenancy agreement before me. I also find as fact that the Tenant owed rent in the amount of \$2,800.00 per month, and that the Tenant did not pay the \$5,600.00 in rent owed for July and August of 2021, as required by the tenancy agreement. As a result, I find the Landlord is entitled to recovery of this unpaid rent amount.

Having made this finding, I will now turn to the matter of the security deposit. Although the Landlord stated that the Tenant has caused in excess of \$3,000.00 in damage to the

rental unit, this damage did not form part of the claims made by the Landlord in the Application. As a result, I have not considered any claims related to damage. Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. As the tenancy ended on September 1, 2021, and the Application seeking retention of the Tenant's security deposit for unpaid rent was filed on August 23, 2021, I find that the Landlord complied with section 38(1) of the *Act*. Based on the Landlord affirmed and undisputed testimony, I find that neither 38(3) or 38(4) of the *Act* apply. As the Landlord's claim is also unrelated to damage and there is no evidence or testimony before me that the Tenant has extinguished their right to the return of the deposit, I find that sections 38(2) and 38(5) of the *Act*, also do not apply. As a result, I find that the full \$1,400.00 security deposit remains held in trust by the Landlord and may therefore be used to offset any amounts owed by the Tenant to the Landlord, pursuant to section 72(2)(b) of the *Act*.

Finally, as the Landlord was successful in their Application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$4,300.00, calculated as follows, and I order the Tenant to pay this amount to the Landlord. \$5,600.00 for outstanding rent, plus \$100, for recovery of the filing fee, less the \$1,400.00 security deposit I have authorized the Landlord to retain.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$4,300.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this 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 Branch under Section 9.1(1) of the *Act*.

Dated: January 4, 2022

Residential Tenancy Branch