



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lions Court Management Corp and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- an Order to retain the tenants’ security deposit pursuant to section 38 of the *Act*,
- an Order of Possession pursuant to section 55 of the *Act*, and
- a return of the filing fee pursuant to section 72.

The landlord’s agent, K.C. and tenant C.C. attended the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. All parties affirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant confirmed receipt of the landlord’s application for dispute and evidentiary package. The tenant is found to have been duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The tenant said she did not upload any evidence in support of this application presently before me, however, she directed me to review the evidence from her January 18, 2022 hearing before a different Arbitrator. Rule of Procedure 3.15 states, “The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch.” I note the hearing on January 18, 2022 was related to unit 106, while this dispute before me is related to unit 403. I find the tenant has not provided any evidence to the landlord in support of the application before me as the tenant failed to serve the landlord pursuant to section 88 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?

Is the landlord entitled to retain the security deposit?

Background and Evidence

A copy of the tenancy agreement submitted by the landlord show this tenancy began on June 1, 2021 and was set to end on May 31, 2022. The tenant testified that she vacated the rental unit at the beginning of January 2022. Rent was \$1,800.00 per month and a security deposit of \$900.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord is seeking a monetary award for unpaid rent of August through December 2021 and for January 2022. Further, the landlord has applied for a monetary award of \$400.00 associated with a cleaning fee some N.S.F fees, and for a return of the filing fee. Section 9 of the tenancy agreement states, "cleaning will be done by professional cleaners after check out and will cost \$400.00. This will be deducted from the tenants (sic) security deposit unless otherwise agreed in writing."

The tenant acknowledged and did not dispute at the hearing that rent was unpaid for the period cited by the landlord. The tenant disputed owing anything for a cleaning fee and said that no agreement had been reached in relation to the security deposit. Further, the tenant argued that no condition inspection had been completed at the conclusion of the tenancy due to a disagreement between the parties.

As noted above, in addition to the amount sought for unpaid rent and for a cleaning fee, the landlord has applied for non-sufficient funds ("N.S.F.") administrative fee of \$25.00 related to the unpaid rent.

Analysis

The tenant acknowledged owing all money for unpaid rent for August through December 2021 and for January 2022. In addition, the tenant agreed that she owed the N.S.F. fees for rents which were unpaid during this time. Based on the testimony of the tenant and her acknowledgement that the rent cited by the landlord was due, I find the landlord is entitled to a monetary award of \$10,800.00 for the unpaid rent (6 x 1,800) and \$150.00 for N.S.F. fees.

I am therefore left to consider the \$400.00 cleaning fee and the landlord's application to retain the security deposit.

Section 20(e) of the *Act* states, "A landlord must not do any of the following...require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement." I therefore find term 9 of the tenancy agreement null and void and decline to consider the landlord's application for a \$400.00 cleaning fee. I find the landlord has failed to demonstrate an entitlement to this amount and has not produced any documentary evidence in support of this cost.

The final portion of the application relates to the tenants' security deposit. Section 38 states that a landlord must apply to retain a tenant's security deposit or return it, within the later of 15 days of the tenant moving out or receiving the tenant's forwarding address in writing. I note the landlord applied for dispute on December 16, 2021 and I find this tenancy ended on approximately January 17, 2022 when the move-out inspection was completed. I find that the landlord has therefore applied within the applicable time limits. A review of the evidence submitted shows that a move-in inspection was completed on May 18, 2021 and was signed by both parties, while the landlord submitted an unsigned condition inspection report at move-out dated January 17, 2022. The parties both testified that they had gotten into a disagreement which made this inspection impossible to complete.

After having examined the move-out inspection supplied by the landlord, I find little evidence that would support damage to the unit requiring a withholding of the security deposit. However, I note section 72(2) of the *Act* allows me to use the security deposit to offset any amount owed to the landlord for unpaid rent. I find given the amount of rent owing that it would be reasonable to offset this with the security deposit being held.

As the landlord was successful in their application, they may recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$10,150.00 as follows:

Item	Amount
Unpaid Rent for August 2021 to December 2021 (5 x 1,800)	9,000.00
Unpaid Rent for January 2022	1,800.00
N.S.F. (6 x 25.00)	150.00
Return of Filing Fee	100.00
Less Security Deposit	(-900.00)
Total =	\$10,150.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 24, 2022

Residential Tenancy Branch