



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 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 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 parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain 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 disagree on much of the details of the tenancy. The landlord provided testimony which contradicts figures given in their own application and their documentary materials. The landlord testified that this tenancy began in March of 2020 with monthly rent of \$750.00 payable on the first of each month and a security deposit of \$350.00 collected at the start of the tenancy. In their application the landlord submits that the security deposit collected is \$400.00. The landlord did not provide cogent explanation as to the discrepancy between their testimony and their written application.

The tenant submits that the tenancy began on February 15, 2020 with a monthly rent of \$900.00 and a security deposit paid of \$450.00.

The copy of the tenancy agreement submitted into evidence has obviously been heavily amended with the use of whiteout and new handwritten details. The written agreement provides that the tenancy starts on April 1, 2020. The rental amount noted is \$750.00 with an earlier figure of \$800.00 crossed out. The agreement indicates that a security deposit of \$400.00 was paid on March 16, 2020. Both the figure of the deposit and the date of payment have been clearly amended with the use of whiteout and handwriting in a different color ink.

No condition inspection report was prepared at anytime for this tenancy.

The parties agree that this tenancy ended in June 2021 and the tenant provided a forwarding address in writing on or about July 1, 2021. The tenant has not given authorization that the landlord may retain any portion of the deposit for this tenancy.

The landlord submits that the tenant failed to pay rent for several months of the tenancy, broke strata rules and incurred fines and broke the plumbing requiring intervention. The landlord now seeks a monetary award in their application of \$3,625.00. I note that the figure is different than that provided in the Monetary Order Worksheet submitted into

evidence which provides a figure of \$4,275.00. The landlord did not explain the discrepancy between the figures despite being asked directly numerous times throughout the hearing.

The landlord submitted into documentary evidence some screenshots of payments by the tenant at various times throughout the tenancy. The figures and the date in the month when payments are made are inconsistent. The landlord also submits some photographs of invoices they have posted on the rental unit door showing various amounts paid and still due as evidence of the rental arrear.

The landlord submitted correspondence from the strata management for the rental building dated April 22, 2020 and July 22, 2020 regarding complaints. The correspondence provides the recipient an opportunity to respond to the complaints. The landlord says that as a result of the complaints the landlord incurred strata fines of \$400.00.

The landlord also submits that the tenants caused the toilet to break on two occasions and submits photographs and handwritten receipts for repairs in the amount of \$250.00.

The tenant disputed that there is any arrear for this tenancy and submitted receipts from the landlord showing full amount of \$900.00 for rent being paid at various times during the tenancy. The receipts do not cover the full range of the tenancy.

The tenant submits that they did not agree with the complaints of the strata and but the landlord did not provide them with an opportunity to respond. The tenant disputes that they are responsible for the plumbing issues in the suite.

Analysis

Given the conflicting testimony regarding payment of the monthly rent I first turn to a determination of credibility. I have considered the parties' testimonies, their content and whether they are supported in the documentary evidence.

Considered in its totality, I do not find the landlord to be a particularly credible witness. Their testimony on the basic background facts such as the details of the tenancy contradict their own written submissions and the documentary evidence. The landlord was evasive in their testimony, failing to provide responses to direct questions giving lengthy, rambling testimony on matters that were not asked nor relevant to the matter at

hand. The landlord failed to respond to basic questions put to them such as “How much was the monthly rent?” choosing to launch into a lengthy diatribe instead of simply providing a figure. I do not find the landlord to be credible witness and where the parties differ, I find the tenant’s version to be more persuasive.

I find that the tenant paid a security deposit for this tenancy of \$450.00. I find the tenant gave consistent testimony on this point and the figure corresponds to half of the monthly rent of \$900.00. I find the various amounts provided by the landlord to be inconsistent and have little relation to the amount they claim was the monthly rent.

Section 38 of the *Act* requires the landlord to either return the tenant’s security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant’s written permission to keep all or a portion of the security deposit as per section 38(4)(a).

As noted in Residential Tenancy Policy Guideline 17, the arbitrator will order he return of the security deposit on a landlord’s application to retain all or part of the deposit whether or not the tenant has applied for dispute resolution for its return.

I accept the evidence of the parties that this tenancy ended in June 2021 and the tenant gave the landlord their forwarding address in writing on or about July 1, 2021. The landlord did not return the security deposit for this tenancy and filed their application for dispute resolution with the Branch on August 11, 2021, outside of the 15 days from July 1, 2021 provided under the *Act*.

I further accept the undisputed evidence of the parties that no condition inspection report was prepared at anytime for this tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant’s security deposit in full within the required 15 days. I accept the tenant’s evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord’s failure to

abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$900.00 Monetary Order, double the value of the security deposit of \$450.00 paid for this tenancy. No interest is payable over this period.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus is on the applicant to establish their claim on a balance of probabilities.

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.

In the present circumstances I am not satisfied that the landlord has established any portion of their monetary claim. I find the landlord's evasive, shifting testimony to be insufficient to establish that there is any rental arrear for this tenancy. I find the documentary evidence of the landlord contradicted by their own testimony as well as the testimony and documentary materials of the tenant. The landlord failed to provide a rental ledger showing the amounts owing and paid for this tenancy and chose to spend the duration of the hearing loudly and repeatedly complaining about the tenant rather than provide cogent details of how they calculated their monetary claim.

I find little evidence that the complaint letters from the strata were incurred due to the tenant or that there was any monetary fine levied. Similarly, I find little evidence that the plumbing issue was caused or contributed to by a breach on the part of the tenant.

Taken in its entirety I find that the landlord has failed to establish any portion of their claim on a balance of probabilities. I find the landlord's testimony consisted primarily of unfocused ranting and their documentary evidence to be of little assistance in supporting the submissions. Consequently, I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$900.00. The landlord must be served with this Order as soon as possible. Should the landlord 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 13, 2022

Residential Tenancy Branch