



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainline Living Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened in response to an application made September 2, 2021 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. Ann Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on September 16, 2021 in accordance with Section 89 of the Act. Postal evidence indicates that the Tenant refused the mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Hearing Package on September 21, 2021 regardless of them not collecting the mail.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started November 1, 2020 on a fixed term to end October 31, 2021. Rent of \$1,830.00 was payable on the first day of each month and does not include hydro. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Tenant gave no written notice to end the tenancy however the Landlord was verbally informed from the Tenant, at some point prior, that the Tenant would move out of the unit on March 15, 2021. On March 20, 2021 the Parties mutually conducted a move-out inspection and the Tenant provided their forwarding address on March 20, 2021.

The Tenant failed to pay rent for March 2021 and the Landlord claims \$1,830.00. The Tenant failed to pay hydro costs for the period November 2, 2020 to and including March 12, 2021 and the Landlord claims \$233.02. The Landlord provides bills for the period covered.

The Landlord had previously made an application for dispute resolution claiming against the security deposit however this application was dismissed with leave to reapply. The decision on this matter dated August 30, 2021 (the "Decision") sets out that "Leave to reapply does not extend any statutory timelines."

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

Although the Tenant moved out of the unit before the end of March 2021, given that the Tenant ended the fixed term tenancy earlier than allowed and gave no written notice to end the tenancy, I find that the Landlord is entitled to the full rent for March 2021 in the amount of **\$1,830.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence that the tenancy agreement requires the Tenant to pay for hydro, the undisputed evidence that the Tenant did not pay for the hydro for the period November 2, 2021 to March 12, 2022 and given the bills that show that the cost claimed was incurred, I find that the Landlord is entitled to the claim of **\$233.02**. As these claims have been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,163.02**.

Section 38 of the Act provides that 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the

deposit plus interest.

As the Landlord's previous application claiming against the security deposit was dismissed with leave to reapply, as no extensions of the limitation period to claim against the security deposit was allowed and based on the Landlord's evidence that they received the Tenant's forwarding address on March 20, 2021 I find that the Landlord's claim against the security deposit herein was made beyond the time allowed. As a result, I find that the Landlord owes the Tenant double the security deposit plus zero interest of **\$1,000.00**. Deducting this amount from the Landlord's entitlement of **\$2,163.02** leaves **\$1,163.02** owed to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,163.02**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 22, 2022

Residential Tenancy Branch