Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenant AR (the tenant) represented tenant SR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant stated she recently changed her name, and her previous name is AT.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Service

The landlord served the notice of hearing and the evidence (the materials) to the tenants by registered mail in October 2021. The tenant confirmed receipt of the packages.

Based on the testimony offered by both parties, I find the landlord served the materials in accordance with section 89(1) of the Act.

The tenant believes she emailed the response evidence to the landlord on April 21, 2022. The landlord confirmed receipt of the tenant's response evidence via email on April 25, 2022.

Based on the convincing testimony offered by the landlord, I find the tenant emailed the response evidence to the landlord and the landlord received it on April 25, 2022. I find the tenant sufficiently served the response evidence, per section 71(2)(c) of the Act.

The tenant testified she did not file an application to the Residential Tenancy Branch (RTB). The tenant submitted as part of her response evidence two documents containing text messages and a signed form RTB-12T (tenant's application for dispute resolution).

I will not be considering the tenant's application for dispute resolution, as the tenant did not file the application for dispute resolution to the RTB. The tenant is at liberty to file an application for dispute resolution to the RTB.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in June 2020 and ended on November 30, 2021. Monthly rent was $2,500.00, due on the first day of the month. At the outset of the tenancy a security deposit of $1,250.00 and a pet damage deposit of $500.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence.

The tenant served her forwarding address (recorded on the cover page of this decision) via email on April 25, 2022, as part of the tenant's application for dispute resolution submitted as response evidence. The tenant confirmed her forwarding address during the hearing.

The landlord said she is not aware of the tenants' forwarding address.

Both parties agreed the tenants did not authorize the landlord to retain the security and pet damage deposits (the deposits).

The landlord affirmed she cleaned the rental unit when the tenancy ended, and she spent more money cleaning the rental unit than the amount of the deposits.

The landlord is claiming unpaid rent in the amount of $1,370.00, as the tenants deducted this amount from rent in October 2021.

Both parties agreed the tenants paid $200.00 for October's 2021 rent and deducted $2,300.00. The landlord authorized the tenants to deduct the amount of $930.00 for a plumbing service paid by the tenants. The tenants were entitled to not pay November's 2021 rent because the landlord served a 2 months notice to end tenancy for landlord's use of the rental unit.

Both parties agreed the landlord did not authorize the tenants to deduct any amount from rent because of the dishwasher.

The tenant stated she deducted the amount of $1,370.00 because the dishwasher was not functioning from July 15 to November 30, 2021. The tenant did not submit an application for dispute resolution regarding the dishwasher.

The landlord submitted a monetary order worksheet indicating a claim in the total amount of $1,370.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

I accept the convincing uncontested testimony and the tenancy agreement that the tenants agreed to pay monthly rent of $2,500.00 on the first day of the month and did not pay the amount of $1,370.00 for October's 2021 rent.

Section 26(1) of the Act states:

> A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant is not authorized to withhold rent, even if the dishwasher did not function.

Based on the undisputed testimony and the monetary order worksheet, I find the tenants are in rental arrears in the amount of $1,370.00 for October 2021.

I award the landlord $1,370.00 for unpaid rent.

Filing fee and Summary

As the landlord was successful in this application, the landlord is entitled to recover the $100.00 filing fee.

In summary, the landlord is entitled to $1,470.00.

Deposits

Section 38 of the Act states:

> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> **(a)the date the tenancy ends, and**
> **(b)the date the landlord receives the tenant's forwarding address in writing,**
> the landlord must do one of the following:
> **(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**
> **(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.**
> (2)Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].
> (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.
(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b)after the end of the tenancy, the director orders that the landlord may retain the amount.
(5)The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].
(6)If a landlord does not comply with subsection (1), the landlord
(a)may not make a claim against the security deposit or any pet damage deposit, and
(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(emphasis added)

Based on the testimony offered by both parties, the landlord is deemed served the tenants' forwarding address, recorded on the cover page of this decision, 3 days after the date of this decision, per section 71(2)(c) of the Act.

The landlord may only retain the amount of the deposits if the tenants or the Director authorizes, per section 38(4) of the Act.

Section 72(2)(b) of the Act states:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
(b)in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost

awarded to a tenant may be deducted from any rent due to the landlord.

Thus, I authorize the landlord to retain $1,470.00 from the deposits.

Conclusion

Pursuant to sections 26 and 72 of the Act, I authorize the landlord to retain the $1,250.00 security deposit and $220.00 from the pet deposit in total satisfaction of the $1,470.00 award.

I deem the landlord served the tenants' forwarding address 3 days after the date of this decision, per section 71(2)(c) of the Act.

The landlord should address the remaining $280.00 pet deposit in accordance with section 38 of the Act.

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: May 06, 2022

Residential Tenancy Branch