



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 20, 2021. The Landlord applied for a monetary order for unpaid rent and to retain the security deposit held in partial satisfaction of the claim, pursuant to the Residential Tenancy Act (the Act).

The Landlord attended the hearing and was accompanied by MB, her daughter, who assisted with translation when necessary. The Tenant attended the hearing on her own behalf. Both the Landlord and the Tenant provided a solemn affirmation.

The Landlord testified the Notice of Dispute Resolution Proceeding and supporting evidence were served on the Tenant by registered mail on September 29, 2021. The Tenant acknowledged receipt. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenant testified she did not serve the documentary evidence submitted to the Residential Tenancy Branch Dispute Management System on the Landlord. Accordingly, it has not been considered in this decision.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

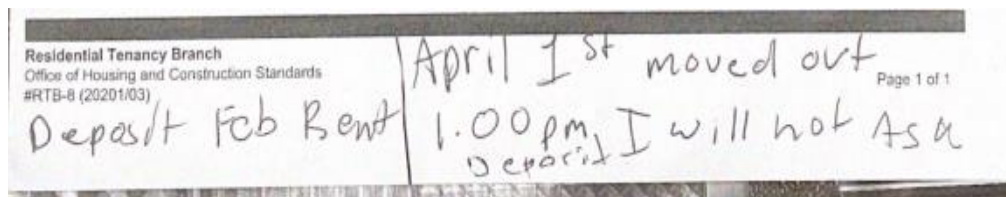
Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to retain the security deposit in partial satisfaction of unpaid rent?

Background and Evidence

The parties agreed the tenancy began on May 1, 2018. The tenancy ended pursuant to a signed Mutual Agreement to End a Tenancy (the Mutual Agreement), a copy of which was submitted into evidence. Although the Mutual Agreement indicates the parties agreed to end the tenancy on March 22, 2021, the parties agreed during the hearing that the tenancy ended on April 1, 2021. The parties agreed that rent of \$2,562.00 per month was due on the first day of each month. The parties agreed that the Tenant paid security deposits totalling \$1,250.00, which are held by the Landlord.

In addition to ending the tenancy, written notes on the Mutual Agreement confirm the parties agreed to withdraw applications each had made against the other. The Landlord also referred to other hand-written notes at the bottom of the form, which appear as follows:



The Landlord testified these notes were written by the Tenant as part of the Mutual Agreement. The Landlord confirmed that she agreed to withdraw three applications made against the Tenant and forgive all outstanding rent if the Tenant agreed the security deposit could be retained on account of rent due in February 2021. The Landlord submitted into evidence a copy of a request to the Residential Tenancy Branch seeking to withdraw the applications made against the Tenant.

The Tenant testified she did not write the notes on the Mutual Agreement and claimed the Landlord had written them. The Tenant testified that she withdrew an application made against the Landlord as part of the agreement.

The file numbers of the withdrawn applications are included above for reference.

In response to the Tenant's oral testimony, the Landlord referred to an audio recording which was included in the Landlord's evidence. In it, the Landlord and the Tenant can be heard discussing the Mutual Agreement. The Landlord is reciting the words that appear on the Mutual Agreement, and the Tenant can be heard repeating them as she writes them down.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord appears to have mischaracterized the application. Rather than seeking a monetary order for unpaid rent, the Landlord intended to request a finding that the Mutual Agreement permitted the Landlord to retain the security deposit. During the hearing, the Landlord indicated that the request for unpaid rent was made in the event the Mutual Agreement – in particular, the Tenant's authorization allowing the Landlord to retain the security deposit – was not upheld. If this aspect of the Mutual Agreement was not upheld, the Landlord wished to make a claim for all outstanding rent.

I have considered the evidence and submissions of the parties and find it is necessary to make a decision with respect to the Mutual Agreement. After careful consideration, I find it is more likely than not that the Tenant did write the notes on the Mutual Agreement and permitted the Landlord to retain the security deposit in partial satisfaction of all outstanding rent due to the end of the tenancy.

I am supported in the above findings by the evidence of both parties who testified they each withdrew claims against the other as part of an overall agreement.

Accordingly, in accordance with section 38(4) of the Act, I find the Tenant agreed the Landlord could retain the security deposit held (\$1,250.00) to pay a liability or obligation of the tenant, and that it is not necessary for me to consider the Landlord's request for unpaid rent.

The Landlord's request for a monetary order for unpaid rent is dismissed without leave to reapply.

Conclusion

I order that the Landlord is entitled to retain the security deposit held (\$1,250.00) pursuant to the Mutual Agreement.

I order that the Landlord's request for a monetary order for unpaid rent is dismissed without leave to reapply.

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 17, 2022

Residential Tenancy Branch