



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order for unpaid rent or utilities, for damages to the unit, site or property, and to recover the cost of the filing fee.

An agent for the landlord, RN (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated November 30, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on December 1, 2021 to the forwarding address the tenant provided to the landlord and submitted in evidence. The registered mail tracking number has been included on the cover page of this Decision for ease of reference. According to the online registered mail tracking website, the registered mail package was eventually returned to sender and marked as "unclaimed" as of December 6, 2021. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of December 6, 2021. Given the above, I find this application to be unopposed by the tenant as I find the tenant was deemed served and did not attend the hearing.

Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be emailed to the tenant at the email address provided by the landlord in the application before me.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A revised tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 23, 2020 and converted to a month-to-month tenancy as of March 31, 2021. The tenancy ended on November 30, 2021, when the tenant vacated the rental unit. The tenant paid a security deposit of \$699.00 and a pet damage deposit of \$699.00 for a total of \$1,398.00 in combined deposits (combined deposits).

The landlord's monetary claim of \$2,617.65 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid November 2021 rent	\$1,398.00
2. Damages	\$1,119.65
3. Filing fee	\$100.00
TOTAL	\$2,617.65

Regarding item 1, the agent testified that the tenant provided proper 1 month notice to end their tenancy, which the landlord responded to on November 1, 2021, and the effective date was November 30, 2021. The agent stated the tenant failed to pay November 2021 rent however owing \$1,398.00.

Regarding item 2, the agent testified that they although they are seeking \$1,119.65 in damages, the tenant failed to attend a scheduled outgoing condition inspection on November 17, 2021 between 9am and 11am. The agent stated that the outgoing condition inspection began at 9:13 a.m. and completed at 10:01 a.m. and the tenant

failed to attend. I will deal with the tenant's extinguishment of their right towards their combined deposits later below.

During the hearing, the agent testified that the tenant has already paid them \$1,471.61 towards money owing. As a result, I will address the tenant's payment of \$1,471.61 further below.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. In addition, section 36 of the Act applies and states:

Consequences for tenant and landlord if report requirements not met

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

[emphasis added]

In the matter before me, I find that a second opportunity was not required as the tenant was advised of the scheduled outgoing inspection and did not request a different date. Therefore, I find that by failing to attend on November 17, 2021, the tenant extinguished all rights to their combined deposits of \$1,398.00. The agent stated they were agreeable to not proceed further with their damages evidence as the **\$1,398.00** in combined deposits more than covers the damages portion of their claim. I find the landlord is entitled to retain the full combined deposits due to the tenant's extinguishing their rights noted above.

In addition, section 26 of the Act requires that rent be paid on the date that it is due as stated on the tenancy agreement. I find the tenant owed \$1,398.00 as of November 1, 2021 and failed to pay any portion. Therefore, I find the tenant breached section 26 of the Act and I award the landlord **\$1,398.00** for unpaid November 2021 rent as claimed.

As the landlord's claim had merit, I also grant the **\$100.00** filing fee pursuant to section 72 of the Act.

As the tenant owes \$1,398.00 plus the \$100.00 filing fee for unpaid November 2021 rent, I find that total is \$1,498.00. From that amount, I have offset the tenant's payment to the landlord prior to the hearing of \$1,471.61 described above, and find the tenant owes a balance for item 1 plus the filing fee of **\$26.39**.

I find I do not need to grant anything additional as the agent agreed that the combined deposits more than cover their damages, so I find the damages portion of the claim is now moot as the agent confirmed they did not want to pursue damages in addition to the extinguished combined deposits.

Given the above, I grant the landlord a monetary order pursuant to section 67 of the Act, for the net balance amount owing by the tenant to the landlord of **\$26.39**.

Conclusion

The landlord's application was successful. The tenant extinguished their rights to their combined deposits.

The landlord has been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$26.39 as indicated above. The landlord must serve the tenant with the monetary order and a demand for payment letter, before they enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 29, 2022

Residential Tenancy Branch