



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 damages and loss 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 tenant testified that they received the landlord's materials and had not filed any evidence of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to any portion of the relief as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on October 1, 2020, originally for a term of one-year and on a month-to-month basis after September 30, 2021. Monthly rent was \$1,850.00 payable on the first of each month. A security deposit of \$925.00 was collected and is still held by the landlord.

The landlord submits that the tenant failed to pay rent as required on November 1, 2021 and vacated without proper notice. The tenant submits that the parties had entered a mutual agreement allowing the tenant to vacate the rental unit without 30-days notice. The tenant says they vacated the rental unit and the tenancy ended on or about October 28, 2021.

The landlord submits that the parties entered an agreement on November 2, 2021 wherein the tenant acknowledged the tenancy was ending without sufficient notice and the tenant agreed to clean the rental unit, remove the garbage from the suite, pay the outstanding utilities and return the keys to the suite prior to the security deposit being returned to the tenant. A copy of the agreement signed and dated by the parties was submitted into documentary evidence.

The landlord says that the tenant failed to comply with the agreement and has therefore extinguished their right to the security deposit's return. The tenant says they completed all of the agreed tasks, provided a forwarding address in writing on November 18, 2021 and is therefore entitled to a return of the deposit for this tenancy.

Analysis

Residential Tenancy Rule of Procedure 6.6 provides that the onus to establish their claim on a balance of probabilities lies with the applicant.

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 case, much of the pertinent facts are undisputed by the parties. The parties agree that no rent was paid on November 1, 2021 as required under the tenancy agreement. The parties disagree on whether there was an agreement between the parties allowing the tenant to end the tenancy without notice as required under the *Act*.

I find that much of the evidence and submissions of the parties to be irrelevant to the central matter. The landlord called as a witness a third-party pest control professional who had no knowledge of any agreement between the parties. The tenant also made reference to text message and email correspondence between the parties but failed to submit any documents into evidence.

Under the circumstances I find the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2021 by the landlord strongly supports the landlord's submission that there was no agreement between the parties to end the tenancy and rent was payable on November 1, 2021. Similarly, the agreement between the parties on November 2, 2021 acknowledges that the tenant has not paid rent nor have they given notice as required under the *Act*. I find the conduct of the parties to be consistent with the landlord's version of events. If there was an agreement between the parties allowing the tenant to end the tenancy there would have been no need for the landlord to issue a 10 Day Notice nor mention the lack of notice in any agreement.

Based on the totality of the evidence I find that the landlord has shown, on a balance of probabilities, that the tenant failed to pay rent of \$1,850.00 as required under the tenancy agreement on November 1, 2021. I therefore issue a monetary award in the landlord's favour for that amount.

The landlord, having found success in their application, is also entitled to recover their filing fee from the tenant.

The landlord said that they waive their right to any monetary award above the amount of the security deposit they are holding for this tenancy. Therefore, in accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

The landlord is authorized to retain the security deposit of \$950.00 for this tenancy.

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: June 21, 2022

Residential Tenancy Branch