



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on June 9, 2022 concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution Proceeding and all other required documents by registered mail on November 4, 2021. The landlord's agent became aware of the emailed Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch to serve on the tenant in a "Spam" folder on November 4, 2021 and sent the documents out the same day. The landlord has provided a copy of the envelope addressed to the tenant with a registered mail sticker, as well as a Canada Post tracking document showing that the registered mail was sent on November 4, 2021 and delivered and signed for on November 8, 2021.

The *Residential Tenancy Act* requires an applicant to serve the respondent within 3 days of receiving the documents to serve from the Residential Tenancy Branch. However, considering that the tenant was apparently fully aware of this hearing and how to access the conference call hearing well in advance, I grant the landlord more time to

serve the required documents, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord's agent also testified that the landlord's evidentiary material was served to the tenant by registered mail on May 20, 2022, and was permitted to upload proof of such service during the hearing. I now have another Registered Domestic Customer Receipt and Canada Post cash register receipt dated May 20, 2022 and I find that the tenant has been served with the evidence of the landlord in accordance with the *Act*.

During the course of the hearing, the landlord's agent withdrew the application for a monetary order for damage to the rental unit or property. Therefore, I dismiss that application without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established a monetary claim as against the tenant for unpaid rent?
- should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 15, 2020 and expired on May 30, 2021 thereafter reverting to a month-to-month tenancy which ultimately ended on or about October 8, 2021. Rent in the amount of \$2,350.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,175.00 as well as a pet damage deposit in the amount of \$1,175.00, both of which are still held in trust the landlord. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant gave notice to end the tenancy on September 8, 2021 effective on October 1, 2021. However, the tenant didn't move out until about October 8, 2021, without paying rent for October. The landlord was unable to re-rent because the tenant's notice to end the tenancy was received late and the tenant had 2 large dogs and refused to contain them or allow the landlord to show the suite. The landlord's agent believes the rental unit was re-rented for January 1, 2022.

The landlord received the tenant's forwarding address on the back of an envelope on October 8, 2021. The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit or pet damage deposit.

The landlord seeks to keep the \$1,175.00 security deposit and the \$1,175.00 pet damage deposit in full satisfaction of the \$2,350.00 claim for unpaid rent, and withdraws the application to recover the filing fee from the tenant.

Analysis

I accept the undisputed testimony of the landlord's agent that the tenant gave notice to end the tenancy on the 8th day of the month. However, the tenancy agreement states that rent is payable on the 1st day of each month. When giving a notice to end a tenancy, the tenant is required to give the notice before the date rent is payable and must be effective at the end of the following rental period. The *Act* also states that incorrect effective dates contained in a notice to end a tenancy given by a landlord or a tenant is changed to the nearest date that complies with the law, which is October 31, 2021. I also accept the undisputed testimony of the landlord's agent that the tenant didn't vacate by the end of September, 2021 and did not pay rent for October, 2021. Therefore, I am satisfied that the landlord is entitled to recovery of October, 2021 rent in the amount of \$2,350.00.

The *Residential Tenancy Act* also states that a landlord must return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period.

In this case, I accept the undisputed testimony of the landlord that the tenant vacated the rental unit on October 8, 2021 and the landlord received the tenant's forwarding address in writing on October 8, 2021. The landlord filed the Application for Dispute Resolution on October 16, 2021, and I am satisfied that the landlord has complied.

The *Act* also specifies that a landlord may only make a claim against a pet damage deposit for damages caused by a pet. However, in this case, given that the tenant has not attended the hearing and has not made an application seeking return of either of the deposits, and given the amount of time that has passed since the tenancy ended, I find it appropriate to order that the landlord keep both deposits in full satisfaction of the landlord's claim for unpaid rent, and I so order.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the rental unit or property is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for recovery of the filing fee is hereby dismissed without leave to reapply.

I hereby order that the landlord keep the \$1,175.00 security deposit and the \$1,175.00 pet damage deposit in full satisfaction of the landlord's claim for unpaid rent.

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 09, 2022

Residential Tenancy Branch