



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* ("Act") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 55 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 1:30 p.m. and ended at 2:25 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed her name and spelling. She stated that she co-owns the rental unit with her husband, and she had permission to speak on his behalf at this hearing. The landlord stated that her husband was assisting her during this hearing, but he did not provide affirmed testimony. The landlord confirmed the rental unit address. She provided her email address for me to send this decision to her after the hearing.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord. She had an opportunity to ask questions, which I answered. She affirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on December 24, 2021, by way of registered mail to a forwarding address provided by the tenant in an email, dated December 7, 2022. The landlord provided a copy of the email for this hearing. The landlord provided a Canada Post receipt, and she confirmed the tracking number verbally during this hearing. She stated that the mail was returned to her on April 13, 2022, by the owner at the address it was sent to, claiming that the tenant did not live there and to stop mailing that address. The landlord provided a copy of the returned envelope for this hearing.

In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on December 29, 2021, five days after its registered mailing to a forwarding address provided by the tenant. I find that the landlord used the forwarding address provided by the tenant on December 7, 2021, shortly before the mail was sent out on December 24, 2021. I find that the tenant did not provide an alternate service address to the landlord, if she could not receive mail at the forwarding address that she provided. I also note that the mail package was not received by the landlord until months later on April 13, 2022. Unclaimed or refused mail does not avoid the deeming provisions of section 90 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

During this hearing, the landlord confirmed that she only wanted to retain the tenant's security deposit of \$500.00, in full satisfaction of the total unpaid rent claim of \$600.00, and she did not want to pursue her claim to recover the \$100.00 application filing fee against the tenant. She said that she made an error in her application, claiming for rent of \$600.00, rather than \$500.00, which is half a month's rent for November 2021.

I informed the landlord that her remaining unpaid rent claim of \$100.00 for November 2021 and the \$100.00 application filing fee, were both dismissed without leave to reapply. She confirmed her understanding of same.

Issue to be Decided

Is the landlord entitled to retain the tenant's security deposit in full satisfaction of the total unpaid rent?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 15, 2021 and ended on November 13, 2021. Both parties signed a written tenancy agreement. Monthly rent of \$1,000.00 was payable on the first day of each month. The tenant paid a security deposit of \$500.00, and the landlord continues to retain this deposit in full. No move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was completed on December 17, 2021, by the landlord only, without the tenant present. The landlord provided two opportunities to the tenant to complete a move-out condition inspection and report. The first was by text message and the second was by sending an RTB approved form for a notice of final opportunity to schedule a condition inspection, by registered mail. Both the text message and the mail were sent to the tenant on December 15, 2021. The landlord provided a Canada Post receipt and verbally confirmed the tracking number for the registered mail during this hearing. The tenant provided a written forwarding address to the landlord, by way of email on December 7, 2021. The landlord had written permission to keep the tenant's entire security deposit of \$500.00, by way of the tenant's e-transfer email, dated November 2, 2021, when the tenant paid only half the rent of \$500.00 for November 2021. The landlord's application to retain the tenant's security deposit was filed on December 20, 2021.

The landlord stated the following facts. The tenant only paid rent of \$500.00 to the landlord for November 2021. The tenant failed to pay the remaining rent of \$500.00 for November 2021 to the landlord. The landlord seeks to retain the tenant's security deposit of \$500.00 for half a month's rent of \$500.00 for November 2021. The tenant provided notice on November 2, 2021, by way of email to the landlord, that she would move out by December 1, 2021. The landlord issued a notice to end tenancy for unpaid rent to the tenant and on November 3, 2021, the tenant told the landlord that she would move out as per the notice on November 12, 2021. However, the tenant did not inform the landlord until November 13, 2021, that she moved out and she left the keys in the unit. The landlord was not able to re-rent the unit to new tenants for November 15, 2021, as the tenant did not clean and left garbage at the rental unit, so the landlord had to do so. The landlord professionally cleaned the rental unit before the tenant moved in,

but the tenant failed to get it professionally cleaned before she moved out, as required by the tenancy agreement. The landlord had to wait for the tenant to return and complete a move-out condition inspection, but the tenant did not attend, despite being given notice by the landlord. The landlord was unable to re-rent the unit to new tenants until January 1, 2021. The landlord posted advertisements online for re-rental.

Analysis

On a balance of probabilities and for the reasons stated below, I make the following findings based on the undisputed, affirmed testimony of the landlord at this hearing and the undisputed documentary evidence of the landlord submitted for this hearing. The tenant did not attend this hearing to provide affirmed testimony. The tenant did not provide any documentary evidence for this hearing.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month, as per the landlord's testimony. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I accept the undisputed affirmed testimony of the landlord at this hearing, that the tenant failed to pay half a month's rent of \$500.00 for November 2021. Therefore, I find that the landlord is entitled to \$500.00 for unpaid rent from the tenant.

The landlord continues to hold the tenant's security deposit of \$500.00. No interest is payable on the security deposit over the period of this tenancy.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on November 13, 2021. The tenant provided a written forwarding address to the landlord, which was received by the landlord on December 7, 2021, by email. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*.

I find that the tenant did not give written permission for the landlord to retain any part of her security deposit in her email, dated November 2, 2021, to the landlord. The tenant's email to the landlord on December 7, 2021, providing her forwarding address, specifically requests the return of her security deposit.

I find that the tenant is not entitled to the return or the original amount or double the value of her security deposit from the landlord. I find that the landlord applied on December 20, 2021, which is within 15 days of the written forwarding address being provided by the tenant on December 7, 2021. Although the landlord's right to retain the security deposit for damages was extinguished for failure to complete a move-in condition inspection report, as required by section 24 of the *Act*, the landlord only applied for unpaid rent, not damages, in this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$500.00, in full satisfaction of half a month's unpaid rent of \$500.00 for November 2021.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$500.00 in full satisfaction of the monetary order.

The remainder of the landlord's application 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: July 28, 2022

Residential Tenancy Branch