



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38.

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 served any evidence of their own. Based on the undisputed 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 the relief sought?

Background and Evidence

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

The parties agree on the following facts. This periodic tenancy originally began on August 1, 2020. The monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$775.00 and pet damage deposit of \$775.00 were collected at the start of the tenancy and are still held by the landlord. The tenant gave written notice to end the tenancy on March 15, 2022 and vacated the rental unit on April 1, 2022 without paying the rent for the month of April. The rental unit is a basement suite of a detached home with the landlord occupying the main floor unit.

The tenant testified that they were continually harassed and badgered by the landlord throughout the tenancy. The tenant complaints about noise from the upstairs suite, the presence of mold in their suite and interactions with the landlord which they characterize as harassment and abuse. The tenant mentioned that there are police files regarding their interactions with the landlord. The tenant believes that their complaints gave rise to their ability to give notice earlier than provided under the *Act* and allows them to withhold rent for the month of April.

The landlord seeks a monetary award of \$1,500.00 for the unpaid rent due on April 1, 2022.

Analysis

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.

Based on the undisputed testimony of the parties and the signed tenancy agreement submitted into documentary evidence I am satisfied that monthly rent for this tenancy was \$1,500.00 payable on the first of each month. I accept the evidence that the tenant

gave notice to end the tenancy on March 15, 2022 and vacated the rental unit without paying rent on April 1, 2022.

As set out in section 26(1) a tenant must pay rent when it is due, whether or not the landlord complies with the Act, regulations or tenancy agreement.

Section 45(1) provides that a tenant may give notice to end tenancy that is effective on a day no earlier than one month after the date the landlord receives the notice, and is the day before the day in the month when rent is payable under the agreement.

Therefore, I find that the effective date of the notice given by the tenant on March 15, 2022 was April 30, 2022 and the tenant was obligated to pay full rent in the amount of \$1,500.00 on April 1, 2022.

I find the submissions of the tenant to be subjective complaints that are not supported in any documentary materials and have little air of reality. I find that the litany of complaints by the tenant, some of which are noted on their written notice to end tenancy, are not supported in documentary evidence and do not rise above the level of disgruntled accusations. The tenant's own testimony consists of repeating phrases that they were "badgered" and "harassed" with little cogent details or information. The tenant's reference to police incidents are of limited probative value as anyone may call and file a complaint with the police regardless of the underlying merits of the complaint. I find the tenant's testimony to not be believable or persuasive and even if all of their complaints were true, would not cumulatively be a breach of a material term of the tenancy that would give rise to the ability to end the tenancy pursuant to section 45(3).

I accept the evidence that the tenant gave written notice to the landlord on March 15, 2022 and failed to pay rent on April 1, 2022 as required under the Act and tenancy agreement. I accept the undisputed evidence that the rent payable on April 1, 2022 was \$1,500.00. I accept the submission of the landlord that they took reasonable steps to mitigate their losses but due to the tenant's presence were unable to find a new occupant and incurred losses.

I therefore issue a monetary award in the amount of \$1,500.00 in the landlord's favour. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

The landlord is authorized to retain the full amount of the security and pet damage deposit 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: September 6, 2022

Residential Tenancy Branch