



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, 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 and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an

opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.
in her absence. The teleconference remained open for 18 minutes.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on October 17, 2020 and ended on November 1, 2021. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$300.00. The landlord testified that the tenants failed to pay the rent for the months of June 2021 to October 2021 inclusive. The landlord testified that the tenants did not make any attempts to pay the rent as they allege. The landlord seeks the five months of unpaid rent of \$7500.00 plus the \$100.00 filing fee for this application. The landlord testified that they received the tenants forwarding address on December 3, 2021.

The tenants gave the following testimony. DW testified that he made three attempts to pay the rent but the landlord refused to accept the rent. VG testified that landlord has refused to return the security deposit.

Analysis

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

Firstly, I address the landlords claim. The tenants do not deny that they didn't pay the rent for five months. The tenants did not provide sufficient evidence to corroborate their testimony that the landlord refused payment. The landlord provided documentation and clear, concise testimony to support their claim, accordingly; I find that the landlord is entitled to \$7500.00 in unpaid rent. The landlord is also entitled to the recovery of the filing fee of \$100.00 for a total award of \$7600.00.

I address the tenants claim as follows. Both parties confirmed that the tenants provided their forwarding address to the landlord on December 3, 2021. The landlord testified that she accepted it on that day.

Section 38 of the Act addresses the above issue as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord acknowledged and confirmed that they received the tenants forwarding address on December 3, 2021. The landlord filed their application on February 4, 2022,

well outside of the 15 day limit, as a result, I find that the tenants are entitled to double their security deposit $\$300.00 \times 2 = \600.00 .

Section 72 of the Act allows for the “offsetting” of repayments. As both parties have been awarded an amount during this hearing, I will apply the tenant’s award of \$600.00 against the landlords award of \$7600.00 leaving an amount owing of \$7000.00 to the landlord.

Conclusion

The landlord has established a claim for \$7000.00. I grant the landlord an order under section 67 for the balance due of \$7000.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 26, 2022

Residential Tenancy Branch