



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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Agent for the Landlord stated that they have previously been granted a monetary Order for unpaid rent for February of 2022, which is the unpaid rent claimed in this Application for Dispute Resolution. The file number for that dispute resolution proceeding appears on the first page of this decision. As a monetary Order for unpaid rent from February of 2022 has already been granted to the Landlord, it is not necessary for me to consider the claim for unpaid rent.

At the hearing the Agent for the Landlord clarified that the Landlord is seeking authority to retain the security deposit in compensation for the unpaid rent from February of 2022.

The Agent for the Landlord stated that on February 17, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on February 09, 2022 was sent to each Tenant, via registered mail. The Landlord submitted Canada Post receipts that corroborate this testimony. The Tenants acknowledged receipt of these documents and that evidence was accepted as evidence for these proceedings.

On September 02, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on March 17, 2022. The Landlord submitted Canada

Post receipts that corroborate this testimony. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 07, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, sometime in April of 2022. The Agent for the Landlord acknowledged that this evidence was received by the Landlord and it was accepted as evidence for these proceedings.

On September 06, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, sometime in March of 2022. The Tenants did not submit Canada Post documentation that corroborates this testimony. The Agent for the Landlord stated that the Landlord did not receive evidence for these proceedings in March of 2022. I described the documents submitted by the Tenants on September 06, 2022 and the Agent for the Landlord repeated that those documents were not received.

I find that the Tenants have failed to meet their burden of proving the September 06, 2022 evidence package was served to the Landlord for these proceedings. I therefore decline to accept those documents as evidence for these proceedings. I note that those documents are not particularly relevant to the issues in dispute at these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to keep all or part of the security deposit?

Is the Landlord entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenants agree that the tenancy began on February 01, 2021 and that a copy of the tenancy agreement was submitted in evidence.

The tenancy agreement declares that the tenancy is for a fixed term, the fixed term of which ends on January 31, 2022. The agreement declares that the rental unit must be vacated at the end of the fixed term, because the Landlord and the Tenants “both agree”.

The Landlord and the Tenants agree that the Tenants were required to pay monthly rent of \$2,650.00 by the first day of each month and that the Tenants paid a security deposit of \$1,325.00, which is still being held by the Landlord.

The Agent for the Landlord stated that on February 05, 2022 the Landlord sent a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to the rental unit, via registered mail. The male Tenant stated that the Tenants did not receive this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as they were no longer living at the unit in February of 2022.

The male Tenant stated that the rental unit was vacated on January 31, 2022. The Agent for the Landlord stated that the Landlord first became aware that the rental unit was vacant on February 20, 2022.

The Tenants submitted a copy of a letter, dated January 31, 2022, in which they inform the Landlord they will be moving by January 31, 2022 and in which they provide a forwarding address. The male Tenant stated that the letter was not written on January 31, 2022, regardless of the date on it. The male Tenant stated that he thinks they sent this letter to the Landlord, via registered mail, on January 21, 2022. He stated that he does not have a Canada Post receipt so he is not certain of the date.

The Agent for the Landlord stated that the Landlord did not receive a forwarding address for the Tenant by registered mail. He stated that the Landlord received the letter dated January 31, 2022, by email, on February 03, 2022. The male Tenant stated that the Tenants did not provide a forwarding address by email.

The Landlord and the Tenants agree that this tenancy was the subject of a previous dispute resolution proceeding, the number of which appears on the first page of this decision. The parties agree that as the result of those proceedings, the Landlord was granted an Order of Possession and a monetary Order, which included \$2,650.00 in rent for February of 2022.

The male Tenant stated that the Tenants filed an Application for Review Consideration of the previous decision, in which the Landlord was granted an Order of Possession and a monetary Order, which included \$2,650.00 in rent for February of 2022. He stated that he does not know the results of that Application for Review Consideration.

Analysis

On the basis of the undisputed evidence, I find that this tenancy was the subject of a previous dispute resolution proceeding, the number of which appears on the first page of this decision. I have confirmed with Residential Tenancy Branch records that as the result of those proceedings, the Landlord was granted an Order of Possession and a monetary Order, which included \$2,650.00 in rent for February of 2022 and \$100.00 for the fee to file an Application for Dispute Resolution.

Residential Tenancy Branch records also confirm the Tenants' submission that they filed an Application for Review Consideration of the previous decision, in which the Landlord was granted an Order of Possession and a monetary Order, which included \$2,650.00 in rent for February of 2022 and \$100.00 for the fee to file an Application for Dispute Resolution.

Residential Tenancy Branch records show that the Application for Review Consideration was dismissed by a Residential Tenancy Branch Arbitrator on April 12, 2022 and that the original decision and Order(s) were confirmed.

What is highly relevant to my decision in these proceedings is that there is a monetary Order requiring the Tenants to pay the Landlord \$2,750.00. The only issue before me is whether the Landlord has the right to retain the security deposit as partial compensation for that monetary Order.

Section 72(2)(b) of the *Act* stipulates that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

As the evidence shows that the director has ordered the Tenants to pay the Landlord \$2,750.00, I find that the Landlord has the right to retain the Tenants' security deposit of \$1,325.00 in partial satisfaction of monetary Order. The Landlord has the right to retain the security deposit pursuant to section 72(2)(b) of the *Act* and the Landlord did not need a written decision from the Residential Tenancy Branch to confirm that authority.

As the Landlord did not need a written decision from the Residential Tenancy Branch to apply the security deposit to the monetary Order that was previously awarded, I find that the Landlord did not need to file this Application for Dispute Resolution. I therefore dismiss the Landlord's application to recover the fee for filing the Application for Dispute Resolution.

Conclusion

The Landlord has the right to retain the Tenants' security deposit of \$1,325.00 in partial satisfaction of monetary Order, pursuant to section 72(2)(b) of the *Act*.

The Landlord's application to recover the fee for filing the Application for Dispute Resolution 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 *Act*.

Dated: September 21, 2022

Residential Tenancy Branch