



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* (the *Act*) for:

- a monetary order for loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of hearing and evidence by email sent to an address provided earlier by the tenant. A copy of an Address for Service form completed by the tenant on September 21, 2021 providing their email address was submitted into evidence. The landlord submitted screenshots of the email sent on March 13, 2022 as evidence of service. Based on the undisputed evidence I find that the tenant is deemed served with the landlord's materials on March 16, 2022, three days after mailing, in accordance with sections 88, 89 and 90 of the Act and Regulation 43 and 44.

Issue(s) to be Decided

Is the landlord entitled to the relief sought?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. The monthly rent for this tenancy was \$2,000.00 payable on the first of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the landlord.

There was an earlier decision under the file number on the first page of this decision wherein the landlord was issued a monetary award in the amount of \$232.08 representing unpaid rent to December 31, 2021.

The tenancy ended in accordance with an Order of Possession issued in the landlord's favour in February 2022. The landlord submits that at the end of the tenancy there was a total arrear of \$3,357.08 comprised of unpaid rent and late fees. The landlord clarified that the figure used in their application of \$2,357.09 does not deduct the amount previously awarded but does include a deduction of the security deposit.

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.

I accept the undisputed evidence of the landlord that the tenant was obligated to pay \$2,000.00 on the first of each month pursuant to the tenancy agreement. I accept the evidence that the tenant failed to pay the full rent required and there was an arrear at the end of the tenancy.

Based on the documentary evidence of the landlord and their testimony I find the total arrear as at the end of the tenancy was \$3,357.08. Of this amount I find that there is an earlier order allowing the landlord recovery of an amount of \$232.08. As such, I find it would be inappropriate to include an amount that has already been the subject of an order in the calculation of a new monetary award. I find that the total arrear that has not been previously ordered recoverable is \$3,125.00. I issue a monetary award in that amount accordingly.

As the landlord was successful in their application, they are also entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,225.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 27, 2022

Residential Tenancy Branch