



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 scheduled to deal with a landlord's application for a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit.

The landlord and her property manager appeared for the hearing and they were affirmed. There was no appearance on part of the tenant.

Preliminary and Procedural Matters

Since the tenant did not appear, I explored service of hearing materials and evidence upon the tenant.

The property manager testified that the proceeding package and the landlord's evidence was sent to the tenant, via email, on April 25, 2022 as authorized in a Substituted Service Order. The landlord provided a copy of the email sent to the tenant on April 25, 2022 and upon review of the image, I am satisfied the landlord complied with the Substituted Service Order and I find the tenant duly served in a manner that complies with section 89(1) of the Act.

The property manager testified that the original hearing materials and additional materials were sent to the tenant via email, using the same email address in the substituted Service Order, on December 3, 2022. An applicant has to serve evidence and any other materials to the respondent no less than 14 clear days before the hearing. Sending materials by email on December 3, 2022 is late given the hearing date of December 20, 2022, as service by email provides for three days for the recipient to receive the email and in counting days, the day of sending and the day of the hearing cannot be counted. I also noted that the landlord provided a revised Monetary Order Worksheet on December 3, 2022 that appears to be an attempt to increase the

monetary claim to in excess of \$37000.00. I declined to permit the claim to be amended as an Amendment to an Application for Dispute Resolution was not served to the tenant at least 14 days before the hearing, as is required to amend a claim, and the tenant was not at the hearing. I informed the landlord that other damages or loss may be pursued under another Application for Dispute Resolution; however, the statutory maximum claim of \$35000.00 must not be exceeded by filing multiple applications.

Issue(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order for unpaid and/or loss of rent, as claimed?
2. Is the landlord authorized to retain the security deposit?
3. Award of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the one year fixed term tenancy commenced on February 14, 2022 and was set to expire on February 13, 2023. The landlord collected a security deposit of \$15000.00 and the monthly rent was set at \$15000.00 payable on the 14th day of every month. The tenancy agreement was executed using an electronic signature application.

The rental unit was described as being a large house, approximately 9000 sq. ft., and furnished.

I made enquiries as to the reason the security deposit was in excess of one-half of the monthly rent. The property manager stated it was so large because the rental unit was furnished and because the tenant indicated she may get a pet. The tenancy agreement actually prohibits a pet unless there is written consent of the landlord and there was no such authorization in the evidence before me. Further, the tenancy agreement provides a separate space for the landlord to record a pet damage deposit versus a security deposit. I cautioned the property manager to ensure the tenancy agreements are completed accurately and in compliance with the Act in the future. The property manager indicated he understood.

The tenant failed to pay rent that was due on March 14, 2022 and on March 15, 2022 a 10 Day Notice to End tenancy for Unpaid Rent ("10 Day Notice") was attached to the door in the presence of a security guard as a witness. The 10 Day Notice indicates rent of \$15000.00 was outstanding as of March 14, 2022 and a stated effective date of March 24, 2022.

The landlord testified that she and the tenant communicated and agreed to meet at a fast food restaurant on March 27, 2022. The landlord testified that she told the tenant she was willing to take a loss on the rent if the tenant would return the keys to the rental unit and the landlord would refund the security deposit. On March 27, 2022 the landlord drove by the rental unit and saw what appeared to be the tenant moving out. The landlord did a walk through of the rental unit with the tenant's boyfriend. The landlord met the tenant at the restaurant and the tenant returned keys to the landlord. The landlord handed the tenant a cheque for \$15000.00, being the return of the security deposit. However, the tenant did not want a cheque but would accept cash or a bank draft. The parties agreed to meet on March 28, 2022 so that the landlord may obtain a bank draft and exchange it for the cheque.

On March 28, 2022 the tenant's boyfriend met the landlord but he did not bring the cheque with him so the landlord did not give him the bank draft. The parties agreed to meet on March 29, 2022 but then that meeting was postponed.

After the tenant vacated on March 27, 2022 the landlord had the security system reactivated. The security company contacted the landlord to advise the landlord that someone had entered the rental unit. The landlord realized that the tenant must not have returned all of the keys. On March 29, 2022 the landlord purchased a chain and lock from a department store and secured the door to the rental unit. The landlord also found out the tenant tried to deposit the \$15000.00 cheque. The landlord put a stop payment on the cheque and cancelled the bank draft.

On April 6, 2022 surveillance cameras showed persons entering the rental unit by the back door.

The landlord started searching for a locksmith to change the locks and was successful in having the locks changed on May 27, 2022.

The landlord is claiming unpaid and/or loss of rent that was not paid on March 14, 2022 and April 14, 2022. The landlord is of the position that the tenant breached their

agreement with the landlord by failing to return all of the keys to the landlord when they met on March 27, 2022 so the landlord is not bound by the settlement offer to absorb the unpaid and/or loss of rent.

The property manager testified that the rental unit was re-rented starting June 1, 2022. The property manager stated advertising the rental unit on several different websites starting on April 7, 2022. Given the rental unit is a large house with a large rent payment, the market of potential tenants is small and it takes longer to re-rent such a unit.

Documentary evidence provided with this Application for Dispute Resolution included a copy of the tenancy agreement; the 10 Day Notice; proof of service of the 10 Day Notice; the Substituted Service Order; and, proof of service by email on April 25, 2022.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, unless the tenant has a lawful right to make deductions or withhold rent, as provided under the Act.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$15000.00 on the 14th day of every month for a fixed term of one year and the tenant failed to pay rent that was due on March 14, 2022.

As I informed the landlord at the hearing, section 19 of the Act limits a security deposit to a maximum of one-half of the monthly rent, or \$7500.00 in this case. Since the tenant paid a \$15000.00 security deposit, I find the tenant had overpaid the security deposit by \$7500.00 and the tenant was in a lawful position to deduct \$7500.00 from rent payable on March 14, 2022, leaving the tenant liable to pay the remainder of \$7500.00.

Where a tenant is in a fixed term, such as in this case, the tenant may be held liable to pay rent for the remainder of the fixed term, so long as the landlord mitigates losses.

While I heard evidence that the landlord had been willing to absorb the unpaid and/or loss of rent under a settlement agreement with the tenant in exchange for return of all of the keys on March 27, 2022, I accept the landlord's unopposed testimony that the tenant breached her end of the agreement by failing to return all of the keys. As such, I

find the settlement agreement was no longer binding and the landlord remains entitled to recovery of unpaid and/or loss of rent from the tenant.

I further accept the unopposed evidence before me that the tenant vacated the rental unit on March 27, 2022 but the landlord did not re-rent the unit until June 1, 2022.

I accept the property manager's testimony as to his advertising efforts in the absence of anything to the contrary and I find his explanation that such a large house with a large rent payment takes longer to find replacement tenants to be reasonable.

Given all of the above, I find the landlord entitled to recover unpaid and/or loss of rent for two months, which I calculate to be \$7500.00 owing on March 14, 2022 after deducting the overpaid portion of the security deposit, plus \$15000.00 that was lost on April 14, 2022.

I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the tenant's \$7500.00 security deposit in partial satisfaction of the amounts awarded to the landlord with this decision and I provide the landlord with a Monetary Order calculated as follows:

Remainder of rent payable for March 14, 2022	\$ 7500.00
Rent lost on April 14, 2022	15000.00
Filing fee	100.00
Less: security deposit	<u>(7500.00)</u>
Monetary Order for landlord	\$15100.00

As I stated during the hearing, the landlord and property manager were cautioned that security deposits are limited to one-half of the monthly rent, at most, in any circumstance. Having given the landlord and property manager this caution, it is expected that the landlord and property manager shall comply with this provision of the Act going forward.

Conclusion

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord and the landlord is provided a Monetary Order for the balance owing of \$15100.00 to enforce upon the tenant.

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: December 21, 2022

Residential Tenancy Branch