



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$6,600 pursuant to section 67;
- a monetary order for \$300 representing the balance of the security deposit which the tenant failed to pay at the start of the tenancy pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from a prior hearing on October 20, 2022. I issued an interim decision setting out the reasons for the adjournment that same day (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:21 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord attended the hearing. He was assisted by his mother ("**HP**") and by counsel ("**MA**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord, his mother, MA, and I were the only ones who had called into the hearing.

Preliminary Issue - Amendment

In the Interim Decision I ordered:

- 1) If the tenant pays rent for November 2022, she must pay the rent to MA's law firm, via e-transfer.

MA stated that the tenant failed to pay November rent. The landlord sought to have the application amended to include a claim for November rent (\$1,100). For the same reasons set out in the Interim Decision (wherein I amended the application to include a claim for

September and October rent), I order that the landlord's application is amended to include a claim for November 2022 rent.

Preliminary Issue – Service

In the Interim Decision, I ordered:

- 1) The landlord must serve the tenant and the Residential Tenancy Branch (the "RTB") with any additional documentary evidence (including the excluded video) he intends to rely on at the reconvened hearing by November 1, 2022 at 4:00 pm (with one exception specified below).
- 2) The tenant must serve the landlord and the RTB with any documentary evidence she intends to rely on at the reconvened hearing no later than November 1, 2022 at 4:00 pm (with one exception specified below).

The landlord served additional documents on the tenant via email on October 20, 2022. He submitted an email showing service of the documents into evidence. The tenant did not serve any additional documents on the landlord.

I admitted the landlord's additional documents into evidence.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$8,800;
- 3) recover the filing fee;
- 4) retain the security deposit and the pet damage deposit in satisfaction/partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a oral tenancy agreement starting September 1, 2022. Monthly rent is \$1,100 and is payable on the first of each month. The tenant paid the landlord a security deposit. At the October hearing, the tenant testified that she paid the landlord a security deposit of \$500 and the landlord testified he paid a security deposit of \$200, which he testified he continues to hold in trust for the tenant.

The landlord testified that the tenant did not pay any rent for the months of April, May, July, August, September, October, or November 2022. In total, the landlord testified that the tenant is \$7,700 in rental arrears. He testified that when the tenant did pay monthly

rent, she paid it in cash and that he issued the tenant receipts. He submitted six such receipts into evidence. However, only five of them are dated (a receipt dated June 23, 2022 for \$1,100). One of these receipts was for \$900. The landlord testified that the tenant only paid \$900 in rent one month, but that he was not seeking a monetary order for the \$200 shortfall.

The landlord testified that once he received the cash payments from the tenant, he would give them to his mother, who would then deposit the money in her bank account. Sometimes his mother would keep some of the cash to cover household expenses. The landlord submitted bank statements from September 2021 to December 2021, which show deposits of amount roughly the size of the tenant's rent (except for December 2021) in the early half of the month. The landlord submitted a document from his mother's bank labeled "Transaction History" from January 1, 2022 to October 20, 2022 which shows deposits on January 14, 2022 (\$700) and July 11, 2022 (\$1,000). The landlord argues that this supports his assertion that the tenant failed to pay rent for the months set out above.

At the October hearing, the tenant testified that she paid rent in April, May, July, August, September, or October, 2022, and testified that she had receipts to support this assertion. She did not submit these documents prior to the October hearing. The hearing was adjourned, in part, to give her an opportunity to submit these documents into evidence prior to this hearing. As stated above, she did not submit any additional evidence.

At the October hearing, the tenant also alluded to a number of issues with the rental unit and also alluded to withholding November's rent on account of these issues. However, she did not explicitly state that she withheld other months' rent due to any deficiencies.

On August 8, 2022, the landlord issued the tenant a 10 day notice to end tenancy for non-payment of rent (the "**Notice**"). It specified arrears owed of \$4,400 and listed an effective date of August 17, 2022. At the October hearing, the tenant acknowledged receipt of the Notice.

The tenant did not dispute the Notice.

Analysis

Section 46 of the Act, in part, states:

Landlord's notice: non-payment of rent

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I accept the landlord's testimony that the tenant did not pay rent for the months of April, May, July, August, September, October, or November 2022. The testimony is consistent with the documentary evidence it submitted. I do not find the tenant's testimony that she paid rent for these months to be credible. I draw a negative inference against the tenant, as she testified that she had receipts to support this testimony, but then failed to submitted when given an opportunity.

It may be that the tenant meant that she was not required to pay rent for these months due to the landlord's breach of the Act or tenancy agreement. This would be consistent her statement at the October hearing that she may not pay November 2022 rent. However, this is not a valid reason to withhold rent. Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

A tenant's right to deduct or withhold rent under the Act is very limited, and the tenant did not provide any evidence to establish her right to withhold rent.

Accordingly, I find that the tenant is currently \$7,700 in rental arrears. I also find that, at the time the Notice was issued, she was \$4,400 in arrears.

I have reviewed the Notice and find that it meets with the form and content requirements set out at section 52 of the Act. I note that any deficiency in the effective date of the Notice is automatically corrected per section 53 of the Act.

The tenant did not pay the amount of arrears set out on the Notice or dispute the Notice within five days of being served with it, or at all. As such, I find that she is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice. I issue the attached order of possession to the landlord. Given the length of

time the tenant has failed to pay her rent, the effective date of this order is two days after the landlord serves it and this decision on the tenant.

As I have not found the tenant to be credible with regards to whether she paid her rent, I accept the landlord's testimony as to the amount of security deposit that was paid at the start of the tenancy. As such, I find that the landlord holds a security deposit of \$200 in trust for the tenant as a security deposit.

As a security deposit is not an amount that a landlord is entitled to retain but is rather an amount that a landlord holds in trust for a tenant, I decline to order that the tenant pay the landlord any amount representing the difference between the amount the tenant paid and was required to pay at the start of the tenancy. I have ordered that the tenancy is ended, so it makes little sense to order that the tenant pay the landlord any additional amount as a security deposit, as the landlord would either have to return it at the end of the tenancy or make a claim against it.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$7,600, representing the following:

Description	Total
Arrears	\$7,700.00
Filing fee	\$100.00
Security deposit credit	-\$200.00
Total	\$7,600.00

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 8, 2022

Residential Tenancy Branch