



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S FFL**

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 38;
- authorization to keep the Tenant's security deposit under section 38; and
- authorization to recover the Landlord's filing fee pursuant to section 72.

The Tenant did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 1:55 pm, in order to enable the Tenant to call into this teleconference hearing. The Landlord attended the hearing and was 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 were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated he applied to the Residential Tenancy Branch for substituted service and that, pursuant to a decision dated July 26, 2022 ("SS Decision"), he received an order to serve the Tenant with the NDRP and Landlord's evidence on the Tenant by text message. The Landlord stated he served the NDRP, his evidence and a copy of the SS Decision (collectively the "NDRP Package") on the Tenant by text message on July 8, 2022. The Landlord submitted into evidence copies of the text messages to corroborate his testimony that he served the NDRP Package on the Tenant. Based on the undisputed testimony and evidence of the Landlord, I find the NDRP Package was served on the Tenant pursuant to sections 88 and 89 of the Act. Pursuant to the SS Decision, I find the Tenant was deemed to have received the NDRP Package on July 11, 2022, being three days after it was sent to the Tenant by text.

The Landlord stated the Tenant did not serve him with any evidence for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- recover unpaid rent from the Tenant?
- to keep the Tenant's security deposit?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord submitted into evidence a copy of the tenancy agreement and a three-page addendum between the Landlord and Tenant. The Landlord stated the tenancy commenced on February 1, 2021, with a fixed term ending January 31, 2022, with rent of \$2,200.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$1,100.00 to the Landlord. The Landlord stated the Tenant paid the security deposit and that he was holding it in trust for the Tenant. Based on the undisputed testimony of the Landlord, I find there was a tenancy between the Landlord and Tenant and that I have the jurisdiction to hear the Application.

The Landlord submitted into evidence a notice from the Tenant stating he was vacating the rental unit on May 31, 2022. The Landlord confirmed the Tenant vacated the rental unit on May 31, 2022. The Landlord stated the Tenant did not pay the rent for April and May 2022 and that the Tenant owes him for rental arrears of \$4,400.00, calculated as follows:

Date	Rent Owed	Paid	Balance
April 1, 2022	\$2,200.00	\$0.00	\$2,200.00
May 1, 2022	\$2,200.00	\$0.00	\$4,400.00
Total	\$4,400.00	\$0.00	\$4,400.00

The Landlord stated a move-in condition inspection was not performed on the rental unit with the Tenant before the Tenant moved in. The Landlord stated he received a text message from the Tenant on July 31, 2022 stating he vacated the rental unit, the keys were left on the kitchen counter and the entrance door was left unlocked. The Landlord stated he scheduled a move-out condition inspection for June 9, 2022. The Landlord submitted into evidence a copy of a text message dated June 6, 2022 in which the Tenant agreed to participate in the move-out inspection on June 9, 2022 at 7:00 pm but the Tenant did not show up at the scheduled inspection.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Sections 23, 24(2), 35, 36 and 38(1) of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
 - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
- 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, *for damage to residential property* is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (3) The landlord must complete a condition inspection report in accordance with the regulations.
 - (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
 - (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) *Unless the tenant has abandoned the rental unit*, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, *for damage to residential property* is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 38(1) 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.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

- (6) 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.

[emphasis in italics added]

The Landlord admitted he did not arrange for, or perform, move-in condition inspection report. As such, the Landlord did not comply with the provisions of section 23(1) of the Act. Section 24(2) provides a landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished. However, in the present case, the Landlord is only seeking recovery of unpaid rent and not for damages to the rental unit. As such, the Landlord's right to claim against the security deposit for unpaid rent is not extinguished by either of sections 24(2) or 36(2) regardless of whether he scheduled and performed move-in or move-out inspections with the Tenant.

The Landlord stated the Tenant gave him notice he was vacating the rental unit for May 31, 2022 and that the Tenant did vacate on that date. The Landlord stated the Tenant did not pay the rent for April or May 2022 and owes him \$4,400.00 for rental arrears. Based on the undisputed testimony of the Landlord, I find the Tenant owed the Landlord \$4,400.00 for unpaid rent for April and May 2022. Pursuant to section 67 of the Act, I order the Tenant pay \$4,400.00 for unpaid rent owed to the Landlord pursuant to the terms of the tenancy agreement. Pursuant to section 72(2) of the Act, I order that the Landlord may retain the security deposit of \$1,100.00 in partial satisfaction of the monetary order.

As the Landlord has been successful in the Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application.

Conclusion

I order the Tenant pay the Landlord \$3,400.00 as follows:

Purpose	Amount
Unpaid rent for April and May, 2022	\$4,400.00
Filing Fee of Landlord's Application	\$100.00
Less: Tenants' Security Deposits	-\$1,100.00
Total:	\$3,400.00

The Landlord must serve the Monetary Order on the Tenant 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: January 1, 2023

Residential Tenancy Branch