



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order of \$3,253.06 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenant's \$1,250 security deposit towards any money owing, and to recover the cost of the filing fee.

Landlord TK (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 6, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlord testified that the Hearing Package was served via registered mail on July 9, 2022. The registered mail tracking number was provided, which was RN 621 594 592 CA. The landlord testified that the mailing address used was texted by the tenant on June 11, 2022. According to the Canada Post registered mail tracking website, the tenant failed to pick up the registered mail package and it was ultimately marked "unclaimed" and was returned to the sender.

Section 90 of the Act indicates that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of July 14, 2022, which is 5 days after July 9, 2022. Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matters

The landlord confirmed the email addresses of both parties during the hearing. The landlord was advised that the decision would be emailed to both parties.

In addition, and pursuant to section 62(3) I also order that the landlord is permitted to serve the tenant via email for any subsequent documents including a monetary order. The service email address for the tenant has been included on the cover page of this decision for ease of reference.

The landlord testified that in addition to the rent owed for June 2022, the landlord has also lost rent for July 2022. As a result, the landlord requested to amend the application to include loss of rent for July 2022. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent for July 2022 would be due as the tenant breached a fixed-term tenancy that was not scheduled to revert to a month-to-month tenancy until March 1, 2023. Therefore, I permit the claim to increase by \$2,500 for loss of July 2022 rent pursuant to section 64(3)(c) of the Act.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2022 and was scheduled to convert to a month-to-month tenancy after March 1, 2023. Instead, the tenant failed to pay rent according to the landlord and was issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and then abandoned the rental unit on June 8, 2022. The landlord testified that the tenant sent a

text on June 11, 2022 with their forwarding address and confirmed the keys were inside the open rental unit.

Monthly rent was \$2,500 per month as listed on the tenancy agreement and the tenant paid a security deposit of \$1,250, which the landlord continues to hold.

The landlord testified that the tenant has failed to pay rent for June 2022 in the amount of \$2,500 and has since suffered a rental loss of \$2,500 for July 2022. The landlord confirmed that the rental unit was re-rented effective August 1, 2022.

Furthermore, the landlord testified and present unpaid utility bills of \$125.65 and \$117.91. The tenancy agreement indicates that electricity and heat were not included in the monthly rent and the landlord confirmed that the rental unit uses electricity for heat.

In addition, the landlord submitted receipts for \$183.75 to remove the junk left behind by the tenant in the rental unit. And finally, the landlord presented a receipt for \$225.75 for cleaning due to the tenant failing to clean the rental unit and leaving junk behind when they abandoned the rental unit.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and 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.

[emphasis added]

In addition, section 45(2) of the Act applies and states:

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice,**

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[emphasis added]

Furthermore, section 37(2) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean,** and undamaged except for reasonable wear and tear, and

[emphasis added]

Based on the above, I find the tenant breached sections 26, 45(2), and 37(2)(a) of the Act. Firstly, the tenant failed to pay rent as required for June and July of 2022, then the tenant was not entitled to end the tenancy earlier than March 1, 2023 as that was the scheduled end date of the fixed-term tenancy agreement before me. Finally, the tenant failed clean the rental unit prior to abandoning it as claimed by the landlord. As a result, I find the landlord has established a total monetary claim of **\$5,653.06**, comprised of \$2,500 owing for June 2022 rent, rental loss of July 2022 rent of \$2,500, \$125.65 and \$117.91 for unpaid hydro bills, \$183.75 for junk hauling, and \$225.75 for cleaning costs.

As the landlord's application was fully successful, I also grant the landlord **\$100** for the filing fee pursuant to section 72 of the Act.

Pursuant to section 38 of the Act, as the as the landlord continues to hold the tenant's security deposit of \$1,250, which I find has accrued \$4.34 in interest to date, I grant the landlord authorization to retain the tenant's full security deposit including interest which totals \$1,254.34 in partial satisfaction of the landlord's monetary claim of **\$5,753.06**. I grant the landlord a monetary order pursuant to section 67 of the Act, for the remaining balance owing by the tenant to the landlord in the amount of **\$4,498.72**.

I caution the tenant not to breach sections 26, 45(2) and 37(2)(b) of the Act in the future.

Conclusion

The landlord's application is fully successful. The landlord has established a total monetary claim of \$5,753.06 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$1,254.34, which includes interest, in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$4,498.72. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned as described above.

This decision will be sent by email to both parties.

The monetary order will be sent by email to the landlord only for service on the tenant.

The landlord is permitted to serve the tenant via email as indicated above.

The tenant is cautioned that they can be held liable for all costs related to the enforcement of the monetary order, including court costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 13, 2023

Residential Tenancy Branch