



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On August 5, 2022, the Landlord made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

T.D. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 19-minute teleconference. All parties in attendance provided a solemn affirmation.

T.D. advised that the Notice of Hearing and evidence package was likely served to the Tenant by email on August 25, 2022, pursuant to the Substituted Service Decision dated August 24, 2022. Proof of service of this having been done was submitted as documentary evidence. Based on this undisputed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

T.D. advised that the tenancy started on August 1, 2019, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on July 31, 2022. Rent was established at an amount of \$1,900.00 per month and was due on the first day of each month. A security deposit of \$950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He stated that the Landlord was seeking compensation in the amount of **\$11,115.00** for rental arrears stemming from as far back as November 2019. He stated that the Tenant would pay partial rent during some months, and he referenced the rent ledger submitted as documentary evidence to corroborate the Landlord's claim for loss.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the

Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address was never provided by the Tenant. As such, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$11,115.00 for outstanding rental arrears, the consistent and undisputed evidence before me is that the Tenant failed to pay the rent according to the ledger, and accrued a substantial debt. As such, I grant the Landlord a monetary award in the amount of **\$11,115.00** to satisfy this claim.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this claim.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Rental arrears	\$11,115.00
Filing fee	\$100.00
Security deposit	-\$950.00
TOTAL MONETARY AWARD	\$10,265.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$10,265.00** in the above terms, and 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: May 4, 2023

Residential Tenancy Branch