



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on August 22, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Unpaid rent;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 16, 2023, and was attended by the Landlord. All testimony provided was affirmed. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Landlord was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution, the Notice of Hearing, and any evidence intended to be relied upon by applicants. As the Tenant did not attend the hearing, I confirmed service of these documents as follows. The Landlord testified that on September 15, 2022, the Notice of Dispute Resolution

Proceeding (NODRP), which contains the Application and the Notice of Hearing, and the documentary evidence, was sent to the Tenant by registered mail at the Tenant's forwarding address. The Landlord provided me with the registered mail tracking number. As a result, I find that the Tenant was deemed served on September 20, 2023, pursuant to section 90(a) of the Act and Policy Guideline #12.

Residential Tenancy Branch (Branch) records show that the NODRP was originally emailed to the Landlord on September 8, 2022, but not received. As a result, the Landlord attended the office on September 14, 2022, and was given a copy. I find that the NODRP was served in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure as it was sent to the Tenant by registered mail the following day. I verified that the hearing information contained in the NODRP was correct and note that the Landlord was able to attend the hearing on time using this information. As a result, the hearing of the Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 20-minute duration of the hearing, no one attended on behalf of the Tenant.

I have reviewed all evidence and testimony before me that was accepted for consideration. However, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to \$4,000.00 in compensation for monetary loss, other money owed, or unpaid rent?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Is the Landlord entitled to retention of the \$1,000.00 security deposit?

Background and Evidence

The Landlord stated that the Tenant signed the tenancy agreement, a copy of which was submitted for my consideration, and paid the security deposit of \$1,000.00 on June 26, 2022. The Tenancy agreement states that the one-year fixed term tenancy was set to commence on July 1, 2022, that rent in the amount of \$2,000.00 is due on the first day of each month and that a \$1,000.00 security deposit is required. However, the

Landlord stated that on June 30, 2022, the Tenant advised them that they would not be moving in and never occupied the rental unit or paid rent. The Landlord also submitted an #RTB-47 Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form dated August 10, 2022.

The Landlord stated that although they did not advertise the rental unit for re-rental, there is a phone number outside the building for prospective tenants to call. The Landlord stated that they received a call in August by someone looking to rent for September 1, 2022. The Landlord stated that the rental unit was subsequently re-rented at the same rental rate for September 1, 2022. A copy of that tenancy agreement was also submitted for my consideration.

The Landlord stated that they lost rent for July and August of 2022 in the amount of \$4,000.00 due to the Tenant's failure to occupy the rental unit or pay rent, and sought recovery of this amount. The Landlord also sought recovery of the \$100.00 filing fee and requested that they be permitted to retain the Tenant's \$1,000.00 security deposit towards the amounts owed.

Analysis

Based on the documentary evidence before me and the Landlord's affirmed and uncontested testimony, I am satisfied that the Tenant entered into a one-year fixed term tenancy agreement with the Landlord, paid a \$1,000.00 security deposit, which the Landlord still holds in trust, and was required to pay rent in the amount of \$2,000.00 on the first day of each month. I am satisfied that the Tenant never occupied the rental unit or paid rent, and failed to give proper notice under the Act to end the Tenancy. As no evidence or testimony was presented that either party extinguished their rights in relation to the security deposit, I find that they did not. I also find that the Landlord complied with section 38(1) of the Act by filing the Application on August 22, 2022, which is 12 days after the date on the Tenant's Notice of Forwarding Address.

Based on the above, I grant the Landlord recovery of \$2,000.00 in lost rent for July of 2022, as I find it unreasonable to expect that the Landlord would have been able to re-rent the rental unit for July with only 1 day's notice, even if it had been posted for re-rental immediately. However, I dismiss the Landlord's claim for recovery of \$2,000.00 in lost rent for August of 2022, without leave to reapply, as I am not satisfied that the Landlord acted reasonably to mitigate this loss. The Landlord stated that they did not advertise the rental unit for re-rental or take any other active steps to have it re-rented in

a timely manner. I find that it was therefore only re-rented for September 1, 2022, as a prospective tenant called the Landlord in August using a phone number posted at the rental unit for inquiries about vacancies.

Although tenants may be liable for rental losses suffered by a landlord over the balance of a fixed-term tenancy if they end their tenancy early, the landlord is still required, pursuant to section 7(2) of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #3, to do whatever is reasonable to minimize their damages or loss. As the Landlord took no active steps to have the rental unit re-rented after they became aware on June 30, 2022, that the Tenant was not going to occupy the rental unit on July 1, 2022, or pay the rent, I therefore find that the Landlord failed to mitigate their loss of rent for August 2022.

As the Landlord was at least partially successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. I also grant them authorization to withhold the Tenant's \$1,000.00 security deposit, plus \$7.32 in interest, towards the above noted amounts owed, pursuant to section 72(2)(b) of the Act. Pursuant to section 67 of the Act, I therefore grant the Landlord a monetary order in the amount of \$1,092.68, for the remaining balance owed and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of **\$1,092.68**. The Landlord is provided with this order 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, it 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 Branch under Section 9.1(1) of the Act.

Dated: May 17, 2023

Residential Tenancy Branch