



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEVEL HOTEL & FURNISHED
SUITES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid or loss of rent and authorization to retain the security deposit.

The landlord's agent and one of the named respondents, referred to by initials "DM" appeared for the initial hearing of February 7, 2023. As seen in the Interim Decision of February 8, 2023 I determined DM did not have standing as a tenant and the landlord's application was amended to exclude DM as a tenant

There was no appearance by the tenant, referred to by initials "DC" at either of the hearing dates. As seen in the Interim Decision of February 8, 2023, I had authorized and ordered the following, in part 2:

The landlord is to serve DC with the original proceeding documents, landlord's evidence, the Substituted Service Order and this Interim Decision within three (3) days of receiving this Interim Decision in the manner authorized in the Substituted Service Order.

The landlord had provided proof the landlord had served DC as ordered above, and I continued to hear from the landlord's agent without the tenant present on the second hearing date of May 30, 2023.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recovery of unpaid or loss of rent, as claimed?
2. Is the landlord authorized to retain the security deposit?
3. Award of the filing fee.

Background and Evidence

The rental unit is a luxury penthouse that had been advertised on an “extended stay” platform of 30+ days. The property is not a hotel.

The landlord and tenant executed an “accommodation agreement” on April 7, 2022 for a one year fixed term tenancy and the rental unit was taken off the market. The tenancy was to start on April 20, 2022 and expire on April 20, 2023. The rent was set at \$22500.00 due on the 20th day of every month. A security deposit of \$11,250.00 was collected.

The landlord was asked to delay the start date of the tenancy several times so that the tenant may get financing in order, up to and including May 12, 2022, and the landlord agreed. The landlord was then asked to cancel the tenancy agreement and start the tenancy on an unknown future date but the landlord declined.

The landlord waited to hear from the tenant but as of May 27 or 28, 2022 there had been no response so the landlord put the unit back on the market starting June 1, 2022.

The landlord’s agent testified the rental unit was vacant until “July or August”.

The landlord is seeking to recover one month of unpaid or loss of rent. The landlord continues to hold the security deposit and seeks to retain the security deposit, in addition to the one month of loss of rent, because the tenant did not give sufficient notice to end the tenancy. The accommodation agreement provides the following, in part, with respect to the security deposit:

Residents are required to complete and return an **Accommodation Agreement** before their stay is confirmed. Payment on account of all amounts due under this Accommodation Agreement are payable when billed by us. Any and all balances owing may be charged to the credit cards/bank account on file or paid from the Security Deposit without further notice. If any portion of the Security Deposit is so used or applied, the Resident shall, replenish the Security Deposit forthwith. If there are no monies owed by the Applicant/Resident at the completion of the Accommodation Agreement, the deposit shall be returned to the Applicant/Resident within 14 days after the completion of the Accommodation Agreement. The deposit will be forfeited if any obligations under this Accommodation Agreement are not fulfilled by the Applicant/Resident. Any forfeiture of the deposit shall not be credited towards any balance owed. The Applicant understands that by signing below they agree to be responsible for all collection fees in the event of any default. The Applicant understands that this deposit will hold the requested Suite and that the amount will be forfeited if the Applicant decides not to take the Suite and fails to provide Onni with notice of such cancellation twelve (12) days prior to the scheduled completion of the Accommodation Agreement.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent.

Section 16 of the Act provides that: “ The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.”

Upon review of the executed “accommodation agreement” I am satisfied the parties entered into a tenancy agreement on April 7, 2022. As such, both parties became bound to fulfill its terms even though the tenant never did take possession of the rental unit, including the tenant’s obligation to pay rent. I was not provided any evidence to suggest the tenant had a legal right to withhold rent payable under the tenancy agreement.

The landlord is seeking to recover one month’s unpaid or loss rent even though the landlord’s loss of rent exceeded that. Upon review of the text communication between the parties, I accept the landlord lost at least one month of rent due to the tenant’s failure to fulfill his obligation to pay rent required under the tenancy agreement. Therefore, I grant the landlord’s request to recover unpaid or loss of rent of \$22,500.00 from the tenant.

Since the landlord was successful in establishing an entitlement to compensation from the tenant, I further award the landlord recovery of the \$100.00 filing fee.

With respect to the landlord's request for authorization to retain the security deposit, I find the landlord's reason for retaining it conflicts with the Act. A tenant's failure to give sufficient notice to end tenancy may be a basis to seek unpaid or loss of rent from the tenant, but it is not a basis for automatic forfeiture of the security deposit. Section 20 of the Act prohibits automatic forfeiture of a security deposit at the end of a tenancy. Although the "accommodation agreement" provides for automatic forfeiture of the security deposit in the term I reproduced in the Background and Evidence section of this decision, section 5 of the Act provides that parties cannot contract outside of the Act and section 6 of the Act provides that any term in a tenancy agreement that conflicts with the Act is not enforceable.

To dispose of the security deposit, I authorize the landlord to retain it; however, it shall be used as an offset to the award for unpaid rent, not an amount the landlord keeps for insufficient notice in addition to the award for unpaid rent. I also calculate accrued interest on the security deposit to be \$103.61 which is also used as an offset to the award for unpaid rent.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent	\$22,500.00
Filing fee	100.00
Less: security deposit	<u>(11,353.61)</u>
Monetary Order for landlord	\$11,246.39

Conclusion

The landlords request for recovery of unpaid or loss of rent is granted. The landlord is authorized to retain the security deposit in partial satisfaction of the unpaid rent and the landlord is provided a Monetary Order in the net amount of \$11,246.39 to enforce against the tenant.

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: June 21, 2023

Residential Tenancy Branch