



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant CN (the tenant) confirmed receipt of the notice of hearing and evidence (the materials) and that both tenants had enough time to review them.

Based on both parties' testimony, I find the landlord served the materials, per section 89(1) of the Act.

The tenant emailed the response evidence to the landlord on June 04, 2023. The landlord affirmed she did not receive the landlord's response evidence.

Per Residential Tenancy Regulation (the Regulation) 44, an email is deemed received on the third day after it is emailed.

Per Rule of Procedure 3.15, the respondent's evidence must be served not less than seven days before the hearing.

In accordance with Regulation 44 and Rule of Procedure 3.15, I excluded the tenants' response evidence, as it was deemed received less than seven days before the hearing.

The landlord submitted a new evidence package on the day of the hearing. Per Rule of Procedure 3.14, I did not accept the landlord's late evidence, as it was not served at least 14 days before the hearing.

Preliminary Issue – Correction of the tenant's name

At the outset of the hearing the tenant corrected the spelling of her first name.

Pursuant to section 64(3)(a) of the Act, I have amended the application.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord stated the tenancy started on October 15, 2015, ended on May 31, 2022 and the rental unit's sale was finalized on May 03, 2022. The tenant testified the tenancy started on July 28, 2012, ended on April 21, 2022 and the rental unit's sale was finalized on May 04, 2022.

Both parties agreed that monthly rent when the periodic tenancy ended was \$2,432.50, due on the first day of the month.

The landlord said that she collected a security deposit (the deposit) of \$1,140.50 and transferred it to the rental unit's purchaser. The tenant affirmed the landlord collected a deposit of \$1,216.16 and a pet damage deposit of \$1,186.25 and the landlord has not returned the deposits.

The tenant did not provide the forwarding address to the landlord. The tenant confirmed her forwarding address (recorded on the cover page of the decision) during the hearing.

The tenant did not authorize the landlord to retain the deposit.

Both parties agreed the landlord served and the tenant received the two month notice for landlord's use (the 2 Month Notice) on March 05, 2022. The 2 Month Notice dated

March 05, 2022, issued because of the rental unit's sale, states the effective date is May 30, 2022.

Both parties agreed the tenant paid rent in full on March 01, 2022.

The landlord is seeking the unpaid rent due on April 01, 2022.

The tenant did not pay the rent because she moved out on April 21, 2022.

The parties emailed on March 25, 2022. Both parties agreed the emails state:

Tenant: If we get the suite would it be possible to get April rent free, then maybe the new owners can move in sooner?

Landlord: April rent is due, it will not be free.

The parties were not aware that a tenant may end a tenancy with a ten day notice when a landlord serves a two month notice to end tenancy to end tenancy.

The landlord stated the tenant agreed to pay rent due on April 01, 2022 on March 25, 2022.

Both parties agreed the landlord served and the tenant received the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 04, 2022 on April 11, 2022. It states the tenant failed to pay rent of \$2,432.50 due on April 01, 2022. The effective date is April 21, 2022.

The tenant testified that she moved out on April 21, 2022 and informed the landlord's agent on April 21, 2022 that she moved out.

The landlord said that she assumes the tenant occupied the rental unit until May 31, 2022 because she did not receive a notice to end tenancy from the tenant.

Analysis

Per Rule of Procedure 6.6, the landlord has the onus to substantiate the application.

I accept both parties' uncontested testimony that monthly rent was \$2,432.50, due on the first day of the month, the tenant received the 2 Month Notice dated March 05, 2022

on the date it was issued, the tenant did not pay rent due on April 01, 2022, the tenant received the 10 Day Notice on April 11, 2022 and did not pay rent on April 01, 2022.

Per section 50(1) of the Act, a tenant may terminate a periodic tenancy by serving a ten-day notice to end tenancy when a landlord serves a 2 month notice to end tenancy. The landlord cannot deny the tenant's notice to end tenancy under section 50(1) of the Act.

Based on the undisputed testimony about the March 25, 2022 emails, I find the tenant inquired the landlord about moving out earlier but did not give notice to end tenancy.

Per 26(1), rent is due in full on the due date under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the tenant's convincing testimony and the 10 Day Notice, I find the tenant moved out on April 21, 2022, as this was the 10 Day Notice's effective date.

Considering the landlord served the 10 Day Notice and the tenant moved out before the 2 month notice's effective date, I find the tenancy ended on April 21, 2022, per section 44(1)(ii) of the Act.

As the tenancy ended on April 21, 2022, the tenant did not pay rent on April 1, 2022 and did not give notice to terminate the tenancy, the landlord is entitled to \$1,702.75 (monthly rent of \$2,432.50 divided by 30 days and multiplied by 21 days).

Filing fee and security deposit

As the landlord was partially successful, I authorize the landlord to recover the \$100.00 filing fee.

Based on the undisputed testimony, I find the landlord collected a deposit of at least \$1,140.50. I am not making a finding if the landlord collected a deposit higher than this amount or a pet deposit.

I accepted the uncontested testimony that the rental unit's sale was finalized in May 2022.

As the tenancy ended before the rental unit's sale was finalized, the landlord was not authorized to transfer the deposit to the rental unit's purchaser.

As explained in section D.2 of Policy Guideline #17, the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit. I order the landlord to retain the deposit of \$1,140.50 in partial satisfaction of the unpaid rent.

In summary:

Item	Amount \$
April rent	1,702.75
Filing fee	100.00
Subtotal	1,802.75
Minus deposit	1,140.50
Total monetary award	662.25

The tenants are at liberty to submit a monetary application for the return of the alleged balance of the security and pet deposits.

Conclusion

Pursuant to sections 26 and 72 of the Act, I authorize the landlord to retain the \$1,140.50 deposit and grant the landlord a monetary order of \$662.25.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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: June 16, 2023

Residential Tenancy Branch