



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding RE/MAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On October 23, 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 and pet damage 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*.

D.L. attended the hearing as an agent for the Landlord, and both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Landlord’s Notice of Hearing packages and the parties’ documentary evidence was discussed, and there were no issues concerning service. As such, I am satisfied that the Tenants have been duly served the Notice of Hearing packages. Furthermore, I have accepted both parties’ documentary 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 and pet damage 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.

All parties agreed that the tenancy started on May 1, 2021, that the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around October 15, 2022, that rent was established at an amount of \$2,233.00 per month, and that it was due on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

As well, both parties confirmed that the Tenants provided their forwarding address in writing on or around October 15, 2022, by hand.

D.L. advised that the Landlord was seeking compensation in the amount of **\$4,466.00** because the Tenants did not pay any rent for September or October 2022. He testified that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, dated September 7, 2022, and he referenced the rent ledger submitted as documentary evidence to support this position of unpaid rent.

Tenant M.Z. advised that they attempted to pay rent for September 2022, but there were some technical issues on the Landlord's part where it could not be received. She testified that she "got tired" of trying to pay the rent if the Landlord would not accept it.

She acknowledged that they did not pay any rent for September or October 2022, and that they did not have any authority from the Landlord to withhold this rent.

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 Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenants provided their forwarding address in writing to the Landlord on or around October 15, 2022, and the Landlord made an Application to claim against the deposits on October 23, 2022. As such, I am satisfied that the Landlord has complied with the *Act*, and the doubling provisions do not apply 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."

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Notice was dated September 7, 2022. According to Section 46(4) of the *Act*, the Tenants had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

Depending on when and how the Notice was served, the Tenants must have paid the rent in full or disputed the Notice within five days of receiving it. However, the undisputed evidence is that the Tenants had not paid the rent to cancel the Notice, nor did they dispute it within the five days. Moreover, M.Z. acknowledged that they did not have a valid reason, or authority under the *Act*, for withholding it.

Based on the consistent, undisputed evidence before me, I am satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Tenants did not pay any rent for September or October 2022, I grant the Landlord a monetary award in the amount of **\$4,466.00** to satisfy this debt.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover \$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 and pet damage deposit in partial satisfaction of these claims.

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 Tenants to the Landlord

Rental arrears for September 2022	\$2,233.00
Rental arrears for October 2022	\$2,233.00
Filing fee	\$100.00
Security deposit	-\$1,100.00
Pet damage deposit	-\$1,100.00
TOTAL MONETARY AWARD	\$2,366.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,366.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. 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: July 27, 2023

Residential Tenancy Branch