



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 467 LAMPSON APARTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on November 2, 2022 seeking compensation for rent amounts owing, and for unpaid rent/damages to the rental unit. Additionally, they seek reimbursement of the Application filing fee. The Landlord amended their Application on July 17, 2023, to update the amount of rent owed by the Tenants.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 10, 2023.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding and evidence

The Landlord attended the scheduled hearing; the Tenant did not attend.

At the start of the hearing, I confirmed with the Landlord that they served the Notice of Dispute Resolution Proceeding to the Tenants (hereinafter, the “Tenant”) as required. The Landlord described starting this Application when the Tenant still resided in the rental unit. They provided a record showing the tracking of the registered mail they sent on November 18, 2022, the day after they completed the Application at the Residential Tenancy Branch. Those packages – one to each Tenant – were returned undelivered to the Landlord on January 8, 2023.

The Landlord also provided a Proof of Service document to show they served the “Arbitration Package” to the Tenant in person on November 17, 2022. The Landlord also described sending all material to the Tenant with email at every step in the Application process.

The Landlord sent further material to the Tenant via registered mail on July 17, 2023, in preparation for the hearing date on August 10, 2023. The Landlord in the hearing stated they did not have a forwarding address from the Tenant when the tenancy ended on December 31, 2022. They utilized email for this purpose as well, providing a copy of that email to the Tenant dated July 17, 2023, attaching further evidence for this matter, and notifying the Tenant as such, at this oft-used email that was in place as a means of communication during the tenancy.

I find the Landlord completed service of the Notice of Dispute Resolution Proceeding within the timeline required as per the *Act* s. 59(3) and their evidence as per the *Residential Tenancy Branch Rules of Procedure*. I find the Landlord served the Tenant notice of this hearing in a method prescribed by s. 89(1)(c), and alternately (f) of the *Act*. I give the Landlord's evidence full consideration where required below.

Preliminary Matter – withdrawn issue

Though the Landlord applied for compensation for damage to the rental unit, in the hearing they stated they were not continuing on that portion of their Application. I dismiss this piece of the Landlord's Application, without leave to reapply.

Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts owing, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement they had in place with this Tenant. In the hearing they confirmed the basic amount of rent for this tenancy: \$1,963.43. This amount accounts for a rent increase effective September 2022. The Tenant paid a security deposit amount of \$947.50 and a pet damage deposit amount of \$947.50.

The Landlord ended the tenancy, with the end-of-tenancy date at December 31, 2022, because of the Tenant's continually messy pets, interference with neighbours, and continual

late payment of rent. In the Landlord's estimation, after the Tenant agreed to leave at the end of December 2022, they knew they were leaving, so did not pay further rent.

The Landlord's claim for rent amounts owing is for each of the full month's rent for October, November, and December 2022. This amount in total is \$5,890.03. This amount is shown on the detailed ledger, generated on December 5, 2022, which the Landlord provided in their evidence for this hearing. This account shows exactly the unpaid rent for each of October, November, and December. The Tenant paid an extra 26 cents on a payment in September; this accounts for the .03 amount in the Landlord's claimed amount.

Analysis

I find as fact that the Tenant paid a security deposit of \$947.50, and a pet damage deposit of \$947.50. This is as shown in the tenancy agreement the Landlord provided in their evidence, as well as the ledger in the evidence.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement, whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless a tenant has a right under the *Act* to deduct all or a portion of the rent.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the Landlord's affirmed testimony in the hearing that the Tenant did not pay rent for each successive month of October, November, and December 2022, prior to the end of this tenancy on December 31, 2022. The Landlord referred to the ledger they provided in evidence, and I accept the Landlord's account that the Tenant received this ledger. I find it more likely than not that the Tenant was aware at the time of the rent amount owing and did

not pay that amount as required. This is shown clearly in the ledger that I find was duplicated and provided to the Tenant for this hearing.

In line with this, I grant the Landlord the full rent amounts owing from October to December 2022. This is \$5,890.03 as per the Landlord's ledger. The Tenant breached s. 26 by not paying the rent as and when required. The Landlord established the value thereof in the hearing.

I find the Landlord was successful in this Application; therefore, I grant reimbursement of the Application filing fee. The sum total of the award to the Landlord is \$5,990.03.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$5,990.03. After setting off each deposit amount of \$947.50, there is a balance of \$4,095.03. I am authorizing the Landlord to keep the security deposit and pet damage deposit amounts and award the balance of \$4,095.03.

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,095.03. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: August 14, 2023

Residential Tenancy Branch