



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDCL-S, FFL | MNRL-S, FFL

Introduction

This hearing was convened as a result of two applications made by the Landlord under the *Residential Tenancy Act* (the “Act”).

In the Landlord’s first application, the Landlord applied for:

- compensation of \$3,000.00 for unpaid rent or utilities pursuant to section 67 of the Act;
- compensation of \$279.62 for monetary loss or other money owed pursuant to section 67 of the Act;
- authorization to retain the security and/or pet damage deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the Landlord’s \$100.00 filing fee from the Tenant pursuant to section 72(1) of the Act.

In the Landlord’s second application, the Landlord applied for:

- compensation of \$3,000.00 for unpaid rent or utilities pursuant to section 67 of the Act;
- authorization to retain the security and/or pet damage deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the Landlord’s \$100.00 filing fee from the Tenant pursuant to section 72(1) of the Act.

The Landlord attended this hearing and gave affirmed testimony.

No one attended this hearing on behalf of the Tenant. I left the teleconference hearing connection open until 2:12 pm in order to enable a representative of the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute

resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

Preliminary Matter – Parties and Style of Cause

The Landlord's applications initially named the corporate Tenant with different variations in the Tenant's name. The Landlord's second application included another individual tenant and respondent, WC.

During the hearing, the Landlord confirmed the correct name for the Tenant. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), I have amended the Landlord's applications to correct the Tenant's name.

The Landlord indicated that the rental unit was rented to the corporate Tenant pursuant to a written tenancy agreement for occupation by WC, an employee of the Tenant. I find that WC did not sign the tenancy agreement with the Landlord as a tenant. Therefore, I find WC was a permitted occupant rather than a tenant with legal rights and obligations under the parties' tenancy agreement. Pursuant to section 64(3)(c) of the Act, I have amended the Landlord's second application to remove WC as a tenant and respondent.

Preliminary Matter – Service of Dispute Resolution Proceeding

The Landlord confirmed that the notice of dispute resolution proceeding package and the Landlord's evidence for the second application were sent to the Tenant via registered mail. The Landlord explained that she had to put in two applications because the Tenants' representatives tried to avoid the Landlord each time she went to serve the first application in November 2022. The Landlord stated that she ran out of time to serve the first application. The Landlord sent two packages for the second application via registered mail on December 6, 2022, which were delivered on December 8, 2022.

I find the Landlord acknowledged that she did not include a copy of the first application when she sent the second application to the Tenant. If the Landlord had done so, I would have found the Tenant to be sufficiently served with the first application as well. I find the first application was not served on the Tenant prior to this hearing in accordance with the Act or sufficiently served. Therefore, I dismiss the Landlord's first application with leave to re-apply. The Landlord is at liberty to re-submit any claims from the first application (that are not repeated in the second application) within the applicable time limits.

I find the Tenant was served with the Landlord's second application and evidence in accordance with sections 88 and 89 of the Act.

Having found the Tenant to be served with notice of this hearing, I directed this hearing to proceed. In this decision, I will only address the claims made in the Landlord's second application.

Issues to be Decided

1. Is the Landlord entitled to compensation of \$3,000.00 for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Landlord entitled to retain the security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on August 1, 2022 and was month-to-month. Rent was \$1,500.00 due on the first day of each month. The Tenant paid a security deposit of \$750.00 which is held by the Landlord.

The rental unit was occupied by WC, an employee of the Tenant, as well as DB, a representative of the Tenant.

The Landlord testified that the Tenant did not pay rent due on October 1, 2022. The Landlord issued a 10 day notice to end tenancy for unpaid rent on October 5, 2022.

On October 6, 2022, the Landlord received a notice of breach letter from the Tenant dated October 5, 2022, with a request to end the tenancy as of October 9, 2022. In this letter, the Tenant alleged that the Landlord had breached a material term for "unlivable conditions". The Tenant alleged that the second of the two bedrooms in the rental unit was unusable and had mould. According to the Landlord, the rental unit was abandoned on or around October 7, 2022.

The Landlord denied that there was mould. The Landlord stated that there were some repairs being done in the rental unit soon after the tenancy started, and WC did not want to give access.

The Landlord testified that the rental unit was not left clean when WC and DB vacated. The Landlord stated that the keys were also not returned to her, so she had to change the locks.

The Landlord explained that her \$3,000.00 claim was for unpaid rent for the month of October 2022 and another month since the Tenant did not give adequate notice. The Landlord stated that the rental unit was not re-rented due to the Landlord's bad experience, and that the Landlord's family currently stay there.

Analysis

1. Is the Landlord entitled to compensation of \$3,000.00 for unpaid rent?

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, I find the Landlord seeks \$1,500.00 for unpaid October 2022 rent, as well as loss of rental income of \$1,500.00 for November 2022. I will address each of these items separately below.

a. Unpaid Rent

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the Landlord's undisputed evidence and testimony, I find the Tenant failed to pay rent of \$1,500.00 due on October 1, 2022 as required under the parties' tenancy agreement. I do not find the evidence to suggest that the Tenant had a right under the Act to deduct all or a portion of the rent due.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$1,500.00 for unpaid October 2022 rent.

b. Loss of Rental Income

Under section 45(3) of the Act, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Otherwise under section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that is:

- not earlier than one month after the date the landlord receives the notice, and
- is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, based on the Landlord's undisputed evidence and testimony, I do not find that the Tenant was entitled to end the tenancy effective October 9, 2022 with its notice given to the Landlord on October 6, 2022. I accept the Landlord's undisputed testimony that there was no mould as alleged.

I find that pursuant to section 45(1) of the Act, the earliest effective date of a notice to end the tenancy given by the Tenant in October 2022 would have been November 30, 2022. I find the Tenant vacated the rental unit in October 2022 and did not give the Landlord sufficient notice to end the tenancy.

However, I find the Landlord's evidence is that she did not re-rent the rental unit after the tenancy ended.

According to Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(emphasis underlined)

I find the Landlord did not reasonably mitigate against a loss of rental income for the month of November 2022 by making efforts to find a new tenant for November 1, 2022. I find the Landlord's evidence is that the rental unit is being occupied by the Landlord's family members instead. Therefore, I do not find the Tenant to be liable for the Landlord's loss of rental income in November 2022. I dismiss the \$1,500.00 claimed by the Landlord under this part without leave to re-apply.

2. Is the Landlord entitled to recover the filing fee?

The Landlord has been partially successful in her application. Pursuant to section 72(1) of the Act, I grant the Landlord's claim for reimbursement of her filing fee for the second application.

3. Is the Landlord entitled to retain the security deposit?

I find the Landlord has established entitlement to compensation from the Tenant exceeding the \$750.00 security deposit held by the Landlord.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the \$750.00 security deposit held by the Landlord in partial satisfaction of the total awarded to the Landlord in this decision.

Conclusion

The Landlord's first application is dismissed with leave to re-apply as it was not served on the Tenant. Leave to re-apply does not extend any applicable time limits.

The Landlord's claims in the Landlord's second application are partially granted for a total amount of \$1,600.00. The Landlord is authorized to retain the Tenant's **\$750.00** security deposit in partial satisfaction of the total awarded.

Pursuant to sections 67 and 72(1) of the Act, I grant the Landlord a Monetary Order of **\$850.00** for the balance, calculated as follows:

Item	Amount
Unpaid October 2022 Rent	\$1,500.00
Filing Fee for Second Application	\$100.00
Less Security Deposit	- \$750.00
Total Monetary Order for Landlord	\$850.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 30, 2023

Residential Tenancy Branch