



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

<u>Dispute Codes</u>	Landlord application:	MNR-S, FF
	Tenant application:	MNSD

Introduction

This hearing was convened as the result of cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for a monetary order for unpaid rent, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the filing fee.

The tenant applied for a return of their security deposit.

The landlord attended the hearing and was affirmed. The tenant did not attend the hearing. The landlord said they applied for an order for substituted service and on November 29, 2022, the landlord was granted authority by an adjudicator with the Residential Tenancy Branch (RTB) to serve the tenant with the landlord's application for dispute resolution, evidence, and notice of hearing (NODRP) by email.

The landlord said they served the tenant by email on November 29, 2022, and on December 1, 2022, the tenant wrote back the word, "received".

Based on the landlord's evidence, I find the landlord submitted sufficient evidence that they served the tenant with the NODRP as allowed in the December of November 29, 2022.

During the hearing the landlord was given the opportunity to provide submissions and refer to evidence. A summary of the submissions and evidence is provided below and includes only that which is relevant to the proceedings.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The RTB Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions at the hearing, I order the tenant's application dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled compensation from the tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted a month-to-month tenancy agreement showing a tenancy start date of January 24, 2022, monthly rent of \$1000, due on the 1st day of the month, and a security deposit of \$500 being paid by the tenant to the landlord.

The landlord retained the tenant's security deposit, having made this claim against it.

The tenancy ended on or about November 1, 2022, when the tenant vacated the rental unit, according to the landlord.

The landlord's original monetary claim was \$1000, for the loss of rent for November 2022. The landlord amended their monetary claim to \$500, which is a half month's loss of rent, as they were able to find a new tenant for November 15, 2022.

The landlord said that on October 6, 2022, they received the tenant's text message that they were vacating the rental unit on November 15, 2022. When the landlord replied that the tenant would be required to pay the monthly rent for November, the tenant replied by text message they would vacate the rental unit on November 1, 2022. The tenant failed to pay any rent for November 2022.

Filed into evidence with their application were copies of the parties' text message communication.

The landlord said they would like to keep the tenant's security deposit of \$500 to satisfy their monetary claim, which also included \$32.53 for damages.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

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 at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenant wanted to end the tenancy by November 15, as originally stated, the latest day the tenant could provide a signed, written notice to end the tenancy was on that date to comply with the Act was September 30, 2022.

Even though the tenant eventually moved out on November 1, 2022, the tenant's notice to vacate would also be September 30, 2022. When the tenant was still in the rental unit on November 1, 2022, the tenant owed rent of \$1000 for the month of November. The landlord would not be able to begin a new tenancy on November 1, 2022, meaning the landlord suffered a loss of rent revenue due to the tenant's insufficient notice to end the tenancy.

I find the landlord submitted sufficient evidence that the tenant failed to give a proper written notice that they were vacating, and that the said insufficient notice caused the landlord to suffer a loss of rent revenue of \$500 for the time period of November 1-14.

As a result, I authorize the landlord to keep the tenant's security deposit of \$500, as requested, in satisfaction of their monetary claim of \$500.

As the landlord was successful, I grant the landlord recovery of their filing fee of \$100.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100 under the following terms:

ITEM	AMOUNT
1. Loss of rent for November 1-14, 2022	\$500
2. Filing fee	\$100
3. <i>Less tenant's security deposit</i>	-\$500
TOTAL MONETARY ORDER	\$100

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 12, 2023