



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 16, 2024 concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord has provided evidence that the tenants were individually served with the Notice of Dispute Resolution Proceeding and some of the evidence by registered mail on October 30, 2023. Some of the landlord's evidence was not provided within the time required under the Rules of Procedure and I advised the landlord that the late evidence will not be considered. All other evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2018 and ended on November 10, 2023. Rent in the amount of \$1,700.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security

deposit from the tenants in the amount of \$850.00 as well as a pet damage deposit in the amount of \$850.00, both of which are still held in trust by the landlord. The rental unit is a basement suite, and the landlord resided in the upper level of the home. A copy of a portion of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenants were served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, but they didn't move out. The Residential Tenancy Branch said that the landlord had made a mistake and the Notice was null and void.

The tenants vacated the rental unit on November 10, 2023 and provided the landlord with a forwarding address in writing on January 2, 2024.

The landlord has provided a copy of a spreadsheet indicating what was owed, what was paid, and when. The tenants are in arrears \$8,520.00, plus 10 additional days for the month of November, 2023. The spreadsheet shows that the tenants were charged a number of late payment fees, however nothing in the tenancy agreement indicates that the tenants had agreed to that. The spreadsheet also includes a \$50.00 fee for an additional occupant but that was only for 1 month. The notation on the spreadsheet states that it appears on item #19 from the rental agreement and the increase in utilities.

Analysis

I have reviewed the landlord's spreadsheet, and I accept the undisputed testimony of the landlord that the tenants are in arrears of rent. However, the law does not permit a landlord to claim or collect a fee for late payment of rent unless that term exists in the tenancy agreement. I have also reviewed the tenancy agreement, and there is no indication of a late payment fee.

The landlord's spreadsheet also indicates a \$50.00 fee for an additional occupant and the notation states that it is item #19 of the tenancy agreement, however, the landlord has not provided a page with item #19. The copy of the tenancy agreement provided for this hearing contains items 1 through 8 on the first page, and the following page starts at item 23(d). I am not satisfied that the term exists on the tenancy agreement, and I decline to order that amount to the landlord.

The following table represents the dates of amount of rent due and paid from March 1, 2019 to the end of October, 2023, leaving out the late payment fees, and the \$50.00 charge for an additional occupant:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
March 1, 2019	Rent due	\$1,700.00		\$1,700.00
March 2, 2019	Rent paid		\$1,700.00	\$0.00
April 1, 2019	Rent due	\$1,700.00		\$1,700.00
April 12, 2019	Rent paid		\$1,350.00	\$350.00
April 24, 2019	Rent paid		\$370.00	-\$20.00
May 1, 2019	Rent due	\$1,700.00		\$1,680.00
June 1, 2019	Rent due and paid	\$1,700.00	\$400.00	\$2,980.00
June 8, 2019	Rent paid		\$400.00	\$2,580.00
June 27, 2019	Rent paid		\$900.00	\$1,680.00
July 1, 2019	Rent due	\$1,700.00		\$3,380.00
July 21, 2019	Rent paid		\$400.00	\$2,980.00
August 1, 2019	Rent due	\$1,700.00		\$4,680.00
August 21, 2019	Rent paid		\$800.00	\$3,880.00
September 1, 2019	Rent due	\$1,700.00		\$5,580.00
September 19, 2019	Rent paid		\$800.00	\$4,780.00
October 1, 2019	Rent due	\$1,700.00		\$6,480.00
October 12, 2019	Rent paid		\$500.00	\$5,980.00
November 1, 2019	Rent due	\$1,700.00		\$7,680.00
November 2, 2019	Rent paid		\$890.00	\$6,790.00
November 20, 2019	Rent paid		\$750.00	\$6,040.00
December 1, 2019	Rent due and paid	\$1,700.00	\$1,300.00	\$6,440.00
December 22, 2019	Rent paid		\$1,000.00	\$5,440.00
January 1, 2020	Rent due	\$1,700.00		\$7,140.00

January 22, 2020	Rent paid		\$450.00	\$6,690.00
February 1, 2020	Rent due	\$1,700.00		\$8,390.00
February 8, 2020	Rent paid		\$800.00	\$7,590.00
February 15, 2020	Rent paid		\$700.00	\$6,890.00
February 29, 2020	Rent paid		\$1,000.00	\$5,890.00
March 1, 2020	Rent due	\$1,700.00		\$7,590.00
March 6, 2020	Rent paid		\$700.00	\$6,890.00
March 14, 2020	Rent paid		\$700.00	\$6,190.00
March 23, 2020	Rent paid		\$500.00	\$5,690.00
April 1, 2020	Rent due	\$1,700.00		\$7,390.00
April 4, 2020	Rent paid		\$1,400.00	\$5,990.00
April 18, 2020	Rent paid		\$1,000.00	\$4,990.00
May 1, 2020	Rent due	\$1,700.00		\$6,690.00
May 2, 2020	Rent paid		\$1,400.00	\$5,290.00
May 19, 2020	Rent paid		\$900.00	\$4,390.00
May 27, 2020	Rent paid		\$800.00	\$3,590.00
June 1, 2020	Rent due	\$1,700.00		\$5,290.00
June 13, 2020	Rent paid		\$1,000.00	\$4,290.00
June 29, 2020	Rent paid		\$1,250.00	\$3,040.00
July 1, 2020	Rent due	\$1,700.00		\$4,740.00
July 17, 2020	Rent paid		\$800.00	\$3,940.00
August 1, 2020	Rent due	\$1,700.00		\$5,640.00
August 2, 2020	Rent paid		\$1,000.00	\$4,640.00
August 22, 2020	Rent paid		\$650.00	\$3,990.00

September 1, 2020	Rent due	\$1,700.00		\$5,690.00
September 22, 2020	Rent paid		\$800.00	\$4,890.00
September 28, 2020	Rent paid		\$1,000.00	\$3,890.00
October 1, 2020	Rent due	\$1,700.00		\$5,590.00
October 22, 2020	Rent paid		\$500.00	\$5,090.00
November 1, 2020	Rent due	\$1,700.00		\$6,790.00
November 2, 2020	Rent paid		\$850.00	\$5,940.00
November 20, 2020	Rent paid		\$900.00	\$5,040.00
November 30, 2020	Rent paid		\$900.00	\$4,140.00
December 1, 2020	Rent due	\$1,700.00		\$5,840.00
January 1, 2021	Rent due	\$1,700.00		\$7,540.00
January 22, 2021	Rent paid		\$500.00	\$7,040.00
February 1, 2021	Rent due	\$1,700.00		\$8,740.00
February 18, 2021	Rent paid		\$400.00	\$8,340.00
March 1, 2021	Rent due	\$1,700.00		\$10,040.00
March 15, 2021	Rent paid		\$500.00	\$9,540.00
March 24, 2021	Rent paid		\$700.00	\$8,840.00
April 1, 2021	Rent due	\$1,700.00		\$10,540.00
April 21, 2021	Rent paid		\$900.00	\$9,640.00
May 1, 2021	Rent due	\$1,700.00		\$11,340.00
May 19, 2021	Rent paid		\$900.00	\$10,440.00
June 1, 2021	Rent due	\$1,700.00		\$12,140.00
June 10, 2021	Rent paid		\$800.00	\$11,340.00
June 24, 2021	Rent paid		\$800.00	\$10,540.00

July 1, 2021	Rent due and paid	\$1,700.00	\$800.00	\$11,440.00
July 16, 2021	Rent paid		\$800.00	\$10,640.00
July 22, 2021	Rent paid		\$800.00	\$9,840.00
July 31, 2021	Rent paid		\$800.00	\$9,040.00
August 1, 2021	Rent due	\$1,700.00		\$10,740.00
September 1, 2021	Rent due	\$1,700.00		\$12,440.00
September 6, 2021	Rent paid		\$1,700.00	\$10,740.00
October 1, 2021	Rent due	\$1,700.00		\$12,440.00
October 4, 2021	Rent paid		\$500.00	\$11,940.00
October 6, 2021	Rent paid		\$500.00	\$11,440.00
November 1, 2021	Rent due	\$1,700.00		\$13,140.00
November 14, 2021	Rent paid		\$500.00	\$12,640.00
November 16, 2021	Rent paid		\$500.00	\$12,140.00
December 1, 2021	Rent due	\$1,700.00		\$13,840.00
December 16, 2021	Rent paid		\$500.00	\$13,340.00
January 1, 2022	Rent due	\$1,700.00		\$15,040.00
January 21, 2022	Rent paid		\$500.00	\$14,540.00
January 22, 2022	Rent paid		\$900.00	\$13,640.00
February 1, 2022	Rent due	\$1,700.00		\$15,340.00
February 2, 2022	Rent paid		\$1,720.00	\$13,620.00
February 17, 2022	Rent paid		\$600.00	\$13,020.00
March 1, 2022	Rent due	\$1,700.00		\$14,720.00
March 14, 2022	Rent paid		\$1,200.00	\$13,520.00
March 24, 2022	Rent paid		\$600.00	\$12,920.00

March 31, 2022	Rent paid		\$1,720.00	\$11,200.00
March 28, 2022	Rent paid		\$2,200.00	\$9,000.00
April 1, 2022	Rent due	\$1,700.00		\$10,700.00
April 28, 2022	Rent paid		\$2,200.00	\$8,500.00
May 1, 2022	Rent due	\$1,700.00		\$10,200.00
June 1, 2022	Rent due and paid	\$1,700.00	\$1,720.00	\$10,180.00
July 1, 2022	Rent due and paid	\$1,700.00	\$1,720.00	\$10,160.00
July 29, 2022	Rent paid		\$1,720.00	\$8,440.00
August 1, 2022	Rent due	\$1,700.00		\$10,140.00
September 1, 2022	Rent due and paid	\$1,700.00	\$2,020.00	\$9,820.00
September 30, 2022	Rent paid		\$1,720.00	\$8,100.00
October 1, 2022	Rent due	\$1,700.00		\$9,800.00
October 27, 2022	Rent paid		\$2,020.00	\$7,780.00
November 1, 2022	Rent due	\$1,700.00		\$9,480.00
December 1, 2022	Rent due and paid	\$1,700.00	\$1,720.00	\$9,460.00
December 24, 2022	Rent paid		\$1,720.00	\$7,740.00
January 1, 2023	Rent due	\$1,700.00		\$9,440.00
February 1, 2023	Rent due	\$1,700.00		\$11,140.00
February 5, 2023	Rent paid		\$850.00	\$10,290.00
February 17, 2023	Rent paid		\$870.00	\$9,420.00
March 1, 2023	Rent due	\$1,700.00		\$11,120.00
March 3, 2023	Rent paid		\$800.00	\$10,320.00
March 21, 2023	Rent paid		\$920.00	\$9,400.00
April 1, 2023	Rent due	\$1,700.00		\$11,100.00

April 2, 2023	Rent paid		\$900.00	\$10,200.00
April 20, 2023	Rent paid		\$500.00	\$9,700.00
May 1, 2023	Rent due and paid	\$1,700.00	\$320.00	\$11,080.00
May 7, 2023	Rent paid		\$1,000.00	\$10,080.00
June 1, 2023	Rent due	\$1,700.00		\$11,780.00
June 3, 2023	Rent paid		\$1,220.00	\$10,560.00
June 18, 2023	Rent paid		\$800.00	\$9,760.00
July 1, 2023	Rent due	\$1,700.00		\$11,460.00
July 3, 2023	Rent paid		\$800.00	\$10,660.00
July 13, 2023	Rent paid		\$920.00	\$9,740.00
July 31, 2023	Rent paid		\$900.00	\$8,840.00
August 1, 2023	Rent due	\$1,700.00		\$10,540.00
August 16, 2023	Rent paid		\$600.00	\$9,940.00
September 1, 2023	Rent due and paid	\$1,700.00	\$1,420.00	\$10,220.00
September 15, 2023	Rent paid		\$1,000.00	\$9,220.00
October 1, 2023	Rent due	\$1,700.00		\$10,920.00
October 4, 2023	Rent paid		\$520.00	\$10,400.00
October 13, 2023	Rent paid		\$800.00	\$9,600.00
October 14, 2023	Rent paid		\$400.00	\$9,200.00

The landlord also claims rent for November 1, 2023 to November 10, 2023 and I find that the landlord is entitled to that, which amounts to \$566.66 ($\$1,700.00 / 30 = \$56.66 \times 10 = \566.66). I find that the landlord has established a claim for unpaid rent in the amount of \$9,766.66 ($\$9,200.00 + \$566.66 = \$9,766.66$).

The landlord currently holds a security deposit in the amount of \$850.00 as well as a pet damage deposit in the amount of \$850.00. The landlord testified that the tenants' forwarding address in writing was received on January 2, 2024. A landlord may only

claim a pet damage deposit for damage caused by a pet. Since the landlord has not made a claim for damage caused by a pet, I alerted the landlord that the pet damage deposit must be returned to the tenants.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

Having found that the landlord has established claims for unpaid rent in the amount of \$9,766.66 and recovery of the \$100.00 filing fee, I order the landlord to keep the \$850.00 security deposit, and interest calculated to the date of this hearing, in the amount of \$17.65 in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference of \$8,899.01 ($\$9,866.66 - \$850.00 - \$17.65 = \$8,999.01$). The tenants must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$850.00 security deposit and \$17.65 interest, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,999.01.

This order is final and binding and may be enforced.

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: January 24, 2024

Residential Tenancy Branch