

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

It also dealt with the Tenant's Application under the Act for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Both the Landlord and the Tenant attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged service of the other party's Proceeding Package by registered mail and in accordance with the Act.

Service of Evidence

Both parties acknowledged service of the other party's evidence by registered mail and in accordance with the Act.

Issues to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit? Is the Tenant entitled to double the security deposit?

Is either party entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1, 2023 with a monthly rent of \$1,650.00, due on first day of the month, with a security deposit in the amount of \$1,000.00.

On October 21, 2023, the Landlord issued a One Month Notice to End Tenancy for Cause. The effective date was November 30, 2023. The Tenant did not dispute the One Month Notice. Instead, the Tenant moved out on October 30, 2023. The Tenant said he left a forwarding address in the Landlord's mailbox on October 30, 2023. However, he forgot to include his name or the unit number, and so on November 18, 2023, he mailed a letter including his forwarding address (and his name) to the Landlord. It was received on November 22, 2023.

The Tenant did not pay rent on November 1, 2023.

The Landlord filed for dispute resolution on November 29, 2023.

Analysis

Is the Landlord entitled to unpaid rent?

The Landlord said that the Tenant was responsible to pay November rent. The Tenant said that he moved out early and that he was therefore not responsible to pay rent. He said the Landlord knew that he moved out on October 30, 2023 because the Landlord's spouse was present at the time.

I find that the Tenant is responsible for November rent. In accepting the end of the tenancy, the Tenant was accepting that the tenancy ended on its effective date, which was November 30, 2023. The One Month Notice did not allow the Tenant to move out early and avoid his obligations under the tenancy agreement. It does not matter that the Landlord or his spouse were aware that the Tenant had moved out – rent was due up to November 30, 2023.

I therefore award the Landlord \$1,650.00.

Is the Landlord entitled to retain the security deposit? Is the Tenant entitled to double the security deposit?

Section 38(4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act states that if the landlord does not return the security deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security deposit.

I find that the Tenant gave the Landlord his forwarding address when he sent the letter by registered mail on November 18, 2023. I do not accept that the "letter" he left in the Landlord's mailbox when he moved out satisfies the requirement to provide a forwarding address in writing, because the Tenant did not include his name with the address.

The Landlord filed for dispute resolution on November 29, 2023, which is within 15 days of receiving the Tenant's forwarding address. For that reason, the security deposit is not doubled.

Section 72(2) allows me to order that the security deposit is applied to any payment due from a tenant to a landlord. In this case, the Landlord is owed November rent. I authorize the Landlord to retain the security deposit in partial satisfaction.

Is either party entitled to recover the filing fee?

The Landlord was successful. The Tenant was not successful. Only Landlord is entitled to recover the filing fee.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord's application is granted. I grant the Landlord a Monetary Order in the amount of **\$732.13** under the following terms:

Monetary Issue	Granted Amount
November rent	\$1,650.00
Plus filing fee	\$100.00
Less security deposit with interest	\$1,017.87

	Total Amount	\$732.13
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The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 Act.

Dated: April 18, 2024

Residential Tenancy Branch