



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 14, 2019. I had allowed the tenant's adjournment application in order to allow for the service of landlord's application to the tenant, as well as the service of each other's evidentiary materials.

The landlord's agent SS ("landlord") appeared on behalf of the landlord in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The adjournment decision dated March 15, 2019 noted the requirements for service of the hearing package and evidence. The tenant acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy began on January 1, 2017 and ended on or about February 26, 2019 after the tenant was served with a 10 Day Notice for Unpaid Rent by the landlord dated January 17, 2019. Monthly rent was set at \$900.00, payable on the first of every month. The landlord had collected, and still holds, a security deposit in the amount of \$450.00. The landlord is requesting a monetary order for unpaid rent in the amount of \$8,100.00 plus recovery of the filing fee for this application.

The landlord submitted a ledger of the outstanding rental arrears, and provided affirmed testimony that \$8,100.00 in outstanding rent was still owing for this tenancy. The tenant does not dispute that he owes this amount, but requires more time to pay as he is unable to work. Both parties attempted to settle the matter in the hearing, but could not achieve a mutual resolution of this matter.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

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

I find that the tenant was obligated to pay the rent as per the tenancy agreement and the Act. I find the landlord provided undisputed evidence to support that the tenant has not paid the outstanding rent, nor did he have an order from an Arbitrator allowing him to deduct all or a portion of the rent, nor do I find that the tenant had a right under the Act to deduct or withhold all or portion of the rent. Accordingly I find that the landlord is entitled to a monetary order in the amount of \$8,100.00 for the outstanding rent.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$7,750.00 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenant's security deposit in partial satisfaction of their monetary claim.

Unpaid Rent	\$8,100.00
Filing Fee	100.00
Less Security Deposit	-450.00
Total Monetary Award	\$7,750.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of 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 *Residential Tenancy Act*.

Dated: May 28, 2019

Residential Tenancy Branch