



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 dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to 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 pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The parties both attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to 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 pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

The parties agreed they entered into a month-to-month tenancy agreement commencing January 13, 2020 for monthly rent of \$1,625.00 payable on the first of the month. The tenant provided a security deposit of \$812.50 which the landlord holds. A copy of the tenancy agreement was submitted as evidence. The parties agreed the landlord commenced proceedings within 15 days of receipt of the tenant's forwarding address sent by registered mail.

The tenant did not move in to the unit. During the hearing, the tenant set out her reasons for not moving in which included impressions she got during communication with the landlord prior to the occupancy date; she explained that, "I got a bad feeling and I always follow my feelings". On January 20, 2020, the tenant sent the landlord a letter requesting the return of her security deposit.

On January 14, 2020, the landlord testified she started to advertise for a new tenant and a replacement was found for February 1, 2020 for the same rent.

The landlord requested a monetary order for half a month's rent in the amount of \$812.50 and authorization to apply the security deposit to the award. She also requested reimbursement of the filing fee.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Loss of rent – two weeks January 2020	\$812.50
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$812.50)
TOTAL CLAIM	\$100.00

The tenant requested the return of the security deposit.

Analysis

Section 26(1) of the *Act* establishes that “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.” The Act states:

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.*

Under the terms of the tenancy agreement, the parties agreed that the tenant was required to pay rent commencing January 13, 2020 in the amount of \$1,625.00. I accept the landlord's evidence that the landlord was ready and willing to allow the tenant to move in and was present in the unit waiting for the tenant on January 13 and 14, 2020.

Section 7 of the Act imposes an obligation on the landlord to do whatever is reasonable to minimize the damage or loss, stating in part:

Liability for not complying with this Act or a tenancy agreement

7 (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their*

*tenancy agreement must do **whatever is reasonable to minimize the damage or loss.** (emphasis added)*

I accept the landlord's testimony that she advertised the unit on January 14, 2020 as soon as it became clear that the tenant was not moving in. As a result, she rented the unit again starting February 1, 2020. I find the landlord has met the burden of proof that the landlord took all reasonable steps to minimize loss.

Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes \$812.50 to the landlord for outstanding rent as claimed. The tenant's explanation for why she withheld rent is not justification under the *Act* for failure to pay.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement.

I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$812.50 for unpaid rent. I award the landlord reimbursement of the \$100.00 filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$812.50 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Rent	\$812.50
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$812.50)
Total Monetary Award	\$100.00

Conclusion

I grant a monetary order to the landlord in the amount of **\$100.00**.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 23, 2020

Residential Tenancy Branch