# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes        MNRL-S, MNDL, MNDCL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on June 15, 2020.  The Landlord applied for a monetary order for unpaid rent, a monetary order for money owed or compensation for damage or loss, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord, the Landlord's Real-estate Agent (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure.  However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter – *Jurisdiction*

Jurisdictional issues were brought during this hearing. The Landlord testified that the Tenant rented a room in their home, that they also lived/stayed in. the Landlord testified that they stopped living/staying there as of mid December 2019 and had entered into a written tenancy agreement with the Tenant on January 9, 2020.

Both parties confirmed that one of the claimed items before me in these proceedings was due to a incident that happened during the time that they shared the rental unit, specifically the claim for unpaid rent for December 2019.

Section 4 of the *Act* defines the types of housing agreement that are <u>not</u> covered by the *Act*. Section 4 of the *Act* states the following:

**What this Act does not apply to**
**4** This Act does not apply to
(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

Pursuant to section 4(c) of the *Act*, I find that I must decline to accept jurisdiction over the Landlord's request for unpaid rent for December 21019, as I find that the Act does not apply to this portion of the Landlord application.

Although the *Residential Tenancy Act* does not apply to this matter, the parties may further pursue this matter through a court of competence jurisdiction.

Preliminary Matter – *Withdrawal of Issues*

During the hearing, when the Landlord was questions by this Arbitrator regarding specific details of there claim, after being questioned the Landlord withdrew their claims for $240.00 for bill payment/NSF fees, and $150.00 to change locks.

As the Tenant did not object to the Landlord's request to withdraw these items, I find that the Landlord has withdrew their claims for $240.00 for bill payment/NSF fees, and $150.00 to change locks. I will proceed in this hearing on the Landlord's remain claim items for the recovery of unpaid rent, for a monetary order for money owed or compensation, and the filing fee for these proceedings.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this tenancy agreement began on January 9, 2020, as a two-month fixed term tenancy.  Rent in the amount of $1,550.00 was to be paid by the first day of each month and at the Tenant had paid a $775.00 security deposit.  The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that it had been determined in a previous Decision issued from the Residential Tenancy Branch that the Landlord had served the Tenant with a Two Month Notice to End Tenancy for the Landlord's Use of the Property on February 21, 2020, and that an Order of Possession was issued as a result of that decision.

Both parties agreed that the Tenant moved out of the rental unit, in accordance with the Order of Possession, by May 1, 2020.

The Landlord testified that the Tenant had not paid the last months rent or this tenancy, for April 2020, in the amount of $1,550.00. The Landlord is requesting the recovery of the unpaid rent for this tenancy.

The Tenant testified that they had used the compensation due to them under the Two-Month Notice as the rent for April 2020.

The Landlord testified that they are seeking $507.09 in compensation for wages lost, due to the time they had to take off of work to deal with two hearing with the residential tenancy branch.

The Landlord also testified that they had paid the Tenant $2,500.00, at the Tenant's request, in order to ensure that the Tenant moved out in accordance with the Notice they issued. The Landlord testified that they had sold the rental unit and had decided to pay the Tenant the requested funds to ensure that the Tenant did not interfere with the sale. The Landlord is requesting the recovery of the $2,500.00 paid to the Tenant.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Landlord is claiming for $1,550.00 in unpaid rent for this tenancy.  I accept the Tenant's testimony that they used the compensation due to them under section 51 of the *Act*, to cover their rent for April 2020. Section 51 of the *Act* states the following:

> **Tenant's compensation: section 49 notice**
> **51** (1) **A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or  before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.**
> > (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
> > (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Pursuant to section 51 (1.1) I find that the Tenant was within their rights to withhold their last months rent for April 2020, as payment of the compensation owed to them due to the Landlord issuing a Notice to end tenancy pursuant to section 49 of the *Act.* Accordingly, I find that the rent for April 2020, has been paid and I dismiss the Landlord's claim for unpaid rent for April 2020.

The Landlord has claimed for compensation for lost wages associated to taking time off work to deal with detail of their hearings with the Residential Tenancy Branch. With the exception of compensation for filing the Application for Dispute Resolution the *Act* does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process, Therefore, I dismiss the Landlord's claim to recover their lost wages.

Additionally, the Landlord has also claimed for compensation for a payment they made to the Tenant, in the amount of $2,500.00. During the hearing, the Landlord testified that

they had made this payment to the Tenant to ensure that the Tenant would move out of the rental unit in accordance with their Notice.

Awards for compensation are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.  It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.  To determine whether compensation is due, the arbitrator may determine whether:
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> - A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - Loss or damage has resulted from this non-compliance;
> - The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the Landlord's application, testimony and evidence on this point and I find that the Landlord has failed to show a breach of the *Act* buy the Tenant in relation to this portion of the Landlord's claim. As the Landlord has failed to show a breach of the *Act* by the Tenant, I dismiss this portion of the Landlord's claim.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I decline to return the Landlord's filing fee for this application.

As I have dismissed the Landlord claim, I order that the Landlord return the Tenant's security deposit to the Tenant, within 15 days of the date of this decision.

I grant the Tenant leave to apply for the return of double their security deposit if the Landlord fails to return the deposit as ordered.

Conclusion

I dismiss the Landlord's claim without leave to reapply.

I order the Landlord to return the security deposit to the Tenant, within 15 days of the date of this decision.

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: October 7, 2020

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Residential Tenancy Branch