



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTEGRATED FINANCIAL SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on November 24, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord and the Tenant both attended the hearing. The Tenant did not submit any documentary evidence for the hearing. The Tenant confirmed receipt of the Landlord's Notice of Hearing and first evidence package, as it was served to him in person. The Landlord provided proof of mailing to show he sent his second evidence package to the Tenant (at the address provided at the move-out inspection, which was confirmed by the Tenant at the hearing) on September 8, 2020. Although the Tenant denies getting the package, I find the Tenant is deemed to have received this package on September 13, 2020, five days after it was sent, pursuant to section 88 and 90 of the Act.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agree that monthly rent is \$2,400.00, and is due on the 15th of the month. Both parties also agree that the Landlord still holds a security deposit in the amount of \$1,200.00.

The Landlord stated that the Tenant moved in on July 15, 2019, and moved out on August 15, 2020. The Landlord stated that a move-out inspection was done at that time, and the Tenant provided his forwarding address in writing. The Landlord did not present any documentary evidence to show any agreement was reached, in writing, with respect to any deductions from the security deposit.

The Landlord indicated on his application that the Tenant failed to pay \$2,100.00 in unpaid rent over the period from April 15, 2020, until August 15, 2020 (4 months). The Landlord provided a clarified and updated calculation during the hearing, since some payments and government subsidies were received after the application was filed.

The Landlord stated that for each of the monthly periods from April 15, 2020, through till August 15, 2020, the Tenant only paid \$1,500.00 in cash each month, and the government paid a subsidy of \$500.00, which left \$400.00 outstanding each month (for 4 months) totalling \$1,600.00 in unpaid rent for that time.

The Tenant did not refute that these are the amounts he paid. However, he stated he was under the impression that he didn't have to pay the full amount of rent, due to COVID-19. The Landlord stated that they never told the Tenant that partial rent was acceptable. The Tenant stated that he was unhappy with his rental unit for many months, due to noise, but was unable to leave because he was under a fixed term tenancy. The Tenant stated he tried to settle with the Landlord but they were unwilling to lower or forgive any rent owing.

Analysis

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

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit

overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

As the tenancy is now over, it is not necessary to consider whether or not the rent was “affected rent” and whether or not a repayment plan was given to the Tenant.

With respect to the Landlord’s request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord’s documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$1,600.00 (4x \$400.00) in rent from the period of April 15, 2020 – August 15, 2020. Rent was due, and payable, as per the tenancy agreement, in the amount of \$2,400.00 per month, and it does not appear this amount was ever changed or modified by way of a new agreement.

I find there is insufficient evidence to show the Landlord and the Tenant have come to any agreement about the deposits at this time, and in the absence of evidence showing the Landlord has any legal basis to withhold the deposits, I will make my orders based on the full amount of the deposit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent	\$1,600.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,200.00)
TOTAL:	\$500.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$500.00** comprised of rent owed. 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: November 25, 2020

Residential Tenancy Branch