



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*") made on January 28, 2021. The Landlord applied for a monetary order for monetary loss or other money owed, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

Two Agents for the Landlord (the "Landlord") attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on January 29, 2021; a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for monetary loss or other money owed?
- 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

The tenancy agreement shows that the tenancy began on October 1, 2019, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The Landlord testified that rent in the amount of \$2,500.00 is to be paid by the first day of each month. The tenancy agreement also recorded that the Landlord had been given a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the tenancy ended due to an order of possession issued by the residential tenancy and that the Tenant moved out in accordance with that order on August 25, 2020.

The Landlords testified that the Tenant was behind on their rent and utility bill payments for in this tenancy in the amount of \$12,613.58 when the tenancy ended, consisting of \$1,500.00 in rent for April 2020, \$2,500.00 in rent for May 2020, \$2,500.00 in rent for June 2020, \$2,500.00 in rent for July 2020, \$2,500.00 in rent for August 2020, and \$1,113.58 in gas and water utility payments. The Landlord submitted a copy of the outstanding utility bills and a tenancy ledger into documentary evidence.

The Landlord is requesting a monetary order for the outstanding rent and utilities for the tenancy.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

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.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the undisputed testimony of the Landlord that the rent and utilities have not been paid for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent and utilities as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$12,613.58, comprised of \$1,500.00 in rent for April 2020, \$2,500.00 in rent for May 2020, \$2,500.00 in rent for June 2020, \$2,500.00 in rent for July 2020, \$2,500.00 in rent for August 2020, and \$1,113.58 in gas and water utility payments. I grant permission to the Landlord to keep the \$1,250.00 security deposit and \$1,250.00 pet damage deposit that they are holding for this tenancy in partial satisfaction of this award.

Additionally, 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 been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$10,213.58, consisting of \$11,500.00 in rent, \$1,113.58 in utilities, \$100.00 in the recovery of the filing fee for this hearing, less the

\$1,250.00 security deposit and the \$1,250.00 pet damage deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 38, 65 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$10,213.58**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: June 1, 2021

Residential Tenancy Branch