



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlords for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

Landlord MJ (the “landlord”) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that she received evidence from the landlords and had the opportunity to review that evidence prior to the hearing. The landlord stated that she did not receive any evidence from the tenant. The tenant stated that a person by the initials of J.J-B served the landlord with the evidence of the tenant. The tenant confirmed that J.J-B was not available as a witness and did not provide anything in writing to confirm that she served the landlord with evidence. As a result, the evidence of the tenant was excluded from the hearing as the landlord testified that she did not receive any evidence and the tenant did not submit supporting evidence such as a written statement from J.J-B or call J.J-B as a witness to corroborate the tenant’s testimony. As an alternative, the tenant was advised that she could speak to any evidence orally during the hearing.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties disputed the start date of the tenancy. According to the landlord, the tenancy began on May 21, 2011, while the tenant claims the tenancy began on May 15, 2011. Both parties did agree that the tenancy was a month to month tenancy. The parties disputed when the tenancy ended. According to the landlord, the tenant vacated the rental unit on February 12, 2013, while the tenant claims she vacated on February 2, 2013.

The landlords are claiming that the tenant failed to pay a total of \$2,340.54 in unpaid rent. The tenant's disputes the landlords' claim in full and stated that she disputes owing the landlords any rent.

The tenant stated that she gave verbal notice to end the tenancy in December 2012. The landlord disputed the tenant's testimony by stating that the tenant did not provide notice that she would be vacating the rental unit as claimed by the tenant.

The landlords submitted a ledger in evidence which indicates that the tenant owes a total of \$2,340.54 which includes \$237.50 owing towards a security deposit that was not paid in full at the start of the tenancy. The tenant stated that she paid a security deposit of \$437.50 at the start of the tenancy, which the landlord disputed. The landlord stated that she had a receipt to prove that only \$200.00 was received from the tenant in May 2011.

The parties did agree that monthly rent of \$875.00 per month was due on the first day of each month and that \$795.58 of the monthly rent was paid through income assistance for most of the tenancy, leaving the tenant's portion of rent to be paid in the amount of \$79.42. The tenant disputed the landlords' claim that she was in arrears for any portion of her rent during the tenancy. The parties agreed that as of July 2012, the tenant did not receive further income assistance payments towards rent owed.

During the hearing, the tenant testified that she actually had a credit by paying more than her required rent to the landlords. The landlord disputed the tenant's testimony by stating that any extra payments were to pay down the arrears the tenant had towards several months of unpaid rent.

The parties provided conflicting testimony regarding the amount of rent paid during the tenancy. The testimony of the parties has been condensed into the following table:

\$875.00 rent owing for the following months	Landlord's testimony	Tenant's testimony
September 2011	\$79.42 owing by tenant	Nothing owing, paid \$79.42
November 2011	\$79.42 owing by tenant	Nothing owing, paid \$79.42
December 2011	\$79.42 owing by tenant	Nothing owing, paid \$79.42
January 2012	\$79.42 owing by tenant	Nothing owing, paid \$79.42
February 2012	Cash payment of \$200.00 by tenant less \$79.42 owing for February 2012 leaving a credit towards rent arrears of \$120.58. Landlord ordered to fax in a copy of the February 1, 2012 receipt.	Tenant denies paying \$200.00 cash for February 2012 and paid the usual amount of \$79.42
March 2012	\$100.00 cash received from tenant leaving a credit towards the tenant's rent arrears of \$20.58	Tenant agrees with paying \$100.00 for March 2012 and that the "extra" paid would be added as a credit to her ledger
April 2012	\$79.42 owing by tenant	Nothing owing, paid \$79.42
May 2012	\$79.42 owing by tenant	Nothing owing, paid \$79.42
June 2012	Ministry paid \$735.58 which is \$60.00 less than the normal amount of \$795.58. June 4, 2012 the tenant paid \$120.00 in cash. Landlord ordered to fax in a copy of the receipt for this month.	Tenant agreed the Ministry failed to pay the correct amount so the tenant paid \$139.42 in cash.
July 2012	Ministry stopped making rental payments to the landlord. Tenant paid \$980.00 on July 9, 2012.	Tenant agrees that the Ministry stopped making rental payments to the landlord. The tenant agreed that she did pay \$980.00 and that the amount in excess of the \$875.00 rent (\$105.00 credit) was to be used as a credit towards a future month's rent.

August 2012	Tenant paid \$850.00 on July 31, 2012 towards August 2012 rent, leaving \$25.00 owing for August 2012 rent.	The tenant claims she paid the landlord \$850.00 on July 30, 2012 as she wanted to pay more for July 2012 so she would have a credit for rent due.
September 2012	Tenant paid \$900.00 on September 10, 2012, leaving a \$25.00 credit towards rent arrears.	Tenant claims she paid \$875.00 on September 1, 2012.
October 2012	Tenant paid \$700.00 on October 1, 2012, then \$100.00 on October 10, 2012 and then \$700.00 on October 25, 2012.	Tenant claims she paid \$875.00 on October 1, 2012.
November 2012	No rent paid by the tenant.	Tenant claims \$875.00 paid on November 1, 2012. Tenant ordered to fax in a copy of her bank statement for this month.
December 2012	Tenant paid \$200.00 on December 12, 2012 and then \$800.00 on December 22, 2012.	Tenant claims she paid \$875.00 on December 1, 2012.
January 2013	No rent paid by the tenant	Tenant claims rent for this month was pre-paid due to a credit from an earlier month.
February 2013	No rent paid by the tenant	Tenant claims she paid rent of \$875.00 on February 1, 2013. Tenant ordered to fax in a copy of her bank statement for this month.

During the hearing, both parties referred to specific evidence and were verbally ordered by me to fax in that specific evidence in support of their testimony. The tenant was ordered to fax in a copy of her November 2012 bank statement in support of a November 1, 2012 payment that the tenant claimed to have made. The tenant was further ordered to fax in a copy of her November 2013 bank statement in support of a February 1, 2013 payment that the tenant claimed to have made. The tenant failed to fax in the documents as ordered and instead faxed in two documents for the wrong timeframe; namely a November 2011 statement and a February 2012 statement.

The landlord was verbally ordered to fax in a receipt for \$200.00 related to the security deposit allegedly paid by the tenant, a receipt for \$200.00 for a cash payment allegedly

made by the tenant on February 1, 2012, and a receipt for \$120.00 for a cash payment allegedly made by the tenant on June 4, 2012. The landlord did fax in the documents as ordered including a \$200.00 receipt dated May 27, 2011 for a “damage dep” which relates to the security deposit, a receipt dated February 1, 2012 for “two hundred dollars”, and a receipt dated June 4, 2012 in the amount of \$120.00.

Analysis

Based on the testimony of the parties, the documentary evidence submitted prior to the hearing, and the documentary evidence submitted after the parties were ordered to do so, and on the balance of probabilities, I find the following.

Landlords’ claim for unpaid rent – Based on the above, I prefer the evidence provided by the landlord for three reasons. Firstly, I find the tenant failed to provide supporting documentary evidence as ordered during the hearing, whereas the landlord did provide the required supporting documentary evidence as ordered and that the documentary evidence supports the landlord’s testimony. Secondly, I find that the tenant has failed to provide any evidence that supports that she paid her rent on time each month and that she paid more than the required amount of rent as claimed by the tenant in that she failed to submit any supporting bank statements that support her testimony. Thirdly, I find the landlord did provide a ledger and supporting documentary evidence that supports the landlord’s testimony that the tenant failed to pay the full security deposit and failed to pay the full amount of rent throughout the tenancy.

Given the above, I accept the landlord’s testimony which is supported by a receipt that the tenant paid a \$200.00 security deposit and not the full security deposit of \$437.50 as claimed by the tenant. I find, however, that the landlords are not entitled to recover the unpaid portion of the tenant’s security deposit after the tenancy has ended, and to which the landlords have included that amount in her ledger submitted in evidence. As a result, I will deduct the unpaid portion of the security deposit which the tenant did not pay in the amount of \$237.50 from the landlords’ claim of \$2,340.54 for a net amount owing of unpaid rent in the amount of \$2,103.04.

I find the landlords have met the burden of proof and are entitled to compensation in the amount of **\$2,103.04** for unpaid rent between the start of the tenancy in May 2011 and the end of the tenancy in February 2013.

As the landlords have succeeded with their application, I grant the landlords the recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlords have established a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which has accrued \$0.00 in interest as follows:

Unpaid rent between May 2011 and February 2013	\$2,103.04
Filing fee	\$50.00
Subtotal	\$2,153.04
<i>(Less Tenant's Security Deposit of \$200.00)</i>	<i>-(\$725.00)</i>
TOTAL AMOUNT OWED BY THE TENANT TO THE LANDLORDS	\$1,953.04

Conclusion

I find that the landlords have established a total monetary claim of \$2,153.04 as indicated above. I authorize the landlords to retain the tenant's full security deposit of \$200.00 in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 for the balance due of **\$1,953.04**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 01, 2013

Residential Tenancy Branch

