



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAPHNE DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The female landlord, who represents the commercial landlord, and her male agent (collectively "landlords") and one tenant DB ("tenant"), attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. One tenant, GA did not attend this hearing, although the hearing lasted approximately 77 minutes in length.

The male agent testified that he served the tenant personally with the Application for Dispute Resolution hearing package ("Application"), at the rental unit where she was residing at the time, on June 27, 2014 at 10:15 p.m., and that he observed the other tenant, GA, at the unit during that time. The male agent testified that a witness, TM, the building manager of the dispute address at the time, observed the personal service of the Application. The tenant acknowledged receiving two copies of the Application on June 27, 2014, from the male agent, and testified that the other tenant GA was in the unit at the same time and did receive a copy of the Application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were served with the Application on June 27, 2014.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent arising out of this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlords testified that there was a written tenancy agreement for the rental unit, dated June 7, 2011. The tenancy agreement was for a month-to-month tenancy, with monthly rent payable in the amount of \$850.00 on the first day of each month. All parties signed the agreement but the tenant testified that she had not been given a copy of the agreement. The landlords acknowledged that a copy may not have been given to the tenant. The tenant testified that she signed the tenancy agreement and confirmed all of the above details regarding the tenancy. However, the landlords contended that the tenant moved into the rental unit sometime in June 2011, while the tenant advised that she moved in on January 1, 2011 but that she did not sign the tenancy agreement until June 2011. The landlords did not provide a copy of the written tenancy agreement with their Application. I prefer the landlords' evidence that the tenants moved into the rental unit in June 2011, as this is when the tenancy agreement was signed, and the landlords were referencing a copy of this agreement during the hearing.

Prior to the above tenancy being established in the rental unit in question, both tenants resided in another unit in the same building from 2009 until they moved to the rental unit in question in 2011. A prior tenancy agreement was in place for a fixed term one year tenancy, which was renewed thereafter on a month-to-month basis, with monthly rent payable in the amount of \$925.00 on the first day of the month. A security deposit of \$462.50 was paid by the tenants for this previous unit.

At the time of this tenancy, the landlords and tenants were residing in the same rental building and had frequent contact. The landlords testified that they did not try to evict the tenants at any point in time. The female landlord is 87 years of age. The landlords and tenant testified that there was a trusting, family-like relationship between them and acknowledged spending time together socially. The relationship seems to have deteriorated near the end of the tenancy before the tenants vacated the unit.

On April 1, 2014, the building which housed the rental unit in question, was sold to another owner, as per the landlords' testimony. The landlords confirmed that they are only seeking unpaid rent amounts until April 1, 2014, before the transfer in property ownership.

As per the tenant's evidence, both tenants vacated the rental unit on July 31, 2014, by providing one month's notice to the new property owners, in order to pursue a more affordable apartment closer to the tenant's place of work. As per the tenant's evidence, the new property owner retained the security deposit of \$462.50 with the tenants' agreement, in order to cover costs for the rental unit. Both parties testified that the landlords in this Application have not retained the tenants' security deposit for the rental unit, as the deposit transferred over to the new property owners in April 2014.

The landlords testified that the tenants have unpaid rent arising from this tenancy from 2012 to 2014. The tenant testified that she has paid rent in full every month during this tenancy and that she has no outstanding unpaid rent. The tenant acknowledged that she may have paid rent late

a couple of times after the due date, but that she had paid all rent amounts due, in full. The tenant testified that she made cash payments for rent throughout her tenancy and was only given a couple of receipts by the landlords. The tenant did not enter into written evidence any receipts and did not have the receipts with her during the hearing. The tenant testified that she asked for receipts from the female landlord but that she did not pursue her requests, because the female landlord would become angry when questioned. The landlords testified that they did not provide receipts for the cash rent payments because the tenants were the only tenants in the building who paid using cash, so it was an unusual procedure for them. The landlords further testified that they did not provide receipts because the rent was rarely paid in full, usually being paid in small amounts and borrowed from other people. The female landlord testified that she may have forgotten to provide receipts on some occasions, when asked. The landlords testified that they tracked the unpaid rent in a ledger, including the one provided with their Application, and that they spoke to the tenants often, as they lived in the same building. The landlords testified that 4 meetings occurred between them and the tenants during the period from 2013 to 2014, in order to discuss the unpaid rent amounts. They maintained that there was no dispute as to the outstanding amounts owing at those meetings.

The landlords have applied for a monetary order for unpaid rent in the amount of \$1,775.00. They provided a two-page ledger, dated February 1, 2014, for the current rental unit, with their Application. The ledger begins with an outstanding balance owing as of March 2013 in the amount of \$2,030.00. The landlords testified that the \$2,030.00 dated back to the year 2012 and they were unable to provide a breakdown of the amount, as no ledger was created for this previous time period. The ledger covers the period up to February 1, 2014. The ledger shows rent of \$850.00 owing for each month and shows payments made by the tenants, including the amount and date of each payment, along with the total outstanding balance at the time. The ledger also includes a carpet cleaning charge of \$125.00 on April 1, 2013, which the landlords testified they paid on behalf of the tenants, as the tenants could not afford the payment at the time. The landlords testified that the charge was for carpet cleaning in the tenants' previous apartment in the same building before the tenants could move to the rental unit in question. They stated that this amount could not be covered by the security deposit, as the tenants were not vacating the building.

As of January 31, 2014, the outstanding balance owed by both tenants is recorded as \$1,955.00. At the bottom of the ledger on the second page, there is a statement: "we agree to repay a portion of this balance each month and its entirety as quickly as possible" and it is signed by both tenants and dated on February 3, 2014. The female landlord also signed the ledger and dated it as of February 10, 2014. The female landlord testified that a meeting at the rental unit, between herself, the male agent and the two tenants occurred, in order to discuss this ledger, and that she witnessed both tenants signing the ledger in person, although she cannot recall whether this meeting occurred on February 3, 2014. The female landlord was unable to explain why she signed the ledger 7 days after the tenants, when she was present at the meeting when the tenants signed the document. It would appear that the tenants'

signatures were more material than the female landlord's signature, given that the document was an acknowledgment of the tenants' obligation to repay the debt.

The tenant acknowledged receiving the two-page ledger on February 1, 2014, when it was handed to her in person by the male agent, while the other tenant, GA, was present. She disputes that the four-person meeting occurred to discuss the ledger and notes that the document was simply dropped off and that the landlords were not present when it was signed. The tenant testified that she and the other tenant, GA, signed the document on February 3, 2014. She said that she personally returned it to the male agent when he was performing gardening work outside of the rental unit building. The tenant testified that she signed the ledger but that she did so under pressure and in fear that she would be evicted from the rental unit. The landlords testified that they never threatened the tenants with eviction, never posted any notices to evict the tenants, and in fact, offered the tenants an opportunity to work off their debts by doing gardening or landscaping work, which was rejected by the tenants. The landlords further testified that they had not charged the tenants any late fees or monetary penalties for their repeated late payments, which were often only partial rent payments.

The landlords also provided a letter, dated June 20, 2014, stating that rent in the amount of \$850.00 had been paid by the tenants for February 2014 and March 2014 and that an additional \$180.00 was paid in March 2014, thereby reducing the outstanding debt on the ledger from \$1,955.00 (as of January 31, 2014, not including the February 2014 rent charged) to \$1,775.00. The letter also states that the tenants committed verbally to paying \$200.00 per month towards the debt in the ledger. The landlords testified that no further payments, aside from the above amounts, have been made by the tenants. The landlords also applied to recover the filing fee of \$50.00 for their application from the tenants.

Analysis

During the hearing, I afforded both parties the opportunity to provide their versions of events and ask any questions.

Both parties provided directly contradictory evidence to each other. The landlords stated that the tenants owed unpaid rent and debt for the rental unit. The tenant stated that she did not owe any unpaid rent or other debt to the landlords. Because of the conflicting evidence provided, I must weigh the evidence on a balance of probabilities and prefer the evidence of one party over the other in making my decision. For the reasons outlined below, I prefer the evidence of the landlords, over that of the tenant. I find that the landlords were more forthright and consistent in their testimony and provided written documentary evidence in their Application, to corroborate their oral submissions. By contrast, I find that the tenant was inconsistent in her testimony and did not provide any documentary evidence to support her oral submissions.

The landlords have applied for a monetary order in the amount of \$1,775.00. They have provided a ledger, dated February 1, 2014, and a letter, dated June 20, 2014, as evidence to substantiate their Application. In the ledger, they have shown outstanding rent charges from April 1, 2013 to February 1, 2014, in the amount of \$850.00 per month. They have also advised in their letter that monthly rent in the amount of \$850.00 was paid for February and March 2014, as well as another payment for \$180.00 in March 2014, after the ledger was submitted.

The ledger shows that every payment made towards rent or the balance of the tenants' previous debt from 2012, during the period from April 1, 2013 to February 1, 2014, has been late, with the exception of one payment made on June 1, 2013. It is unclear when the December 2013, February 2014 and March 2014 payments were made, as the dates were not indicated in the ledger or the letter. A number of payments are partial payments, less than the \$850.00 rent amount.

In accordance with Section 26 of the *Act*:

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. (*Emphasis added*)

Even though the tenant did not have a copy of the tenancy agreement, which the landlords were required to provide under Section 13(3) of the *Act*, the tenant admitted that she signed the tenancy agreement, agreed that there was a tenancy in place and that rent was due on the first day of each month. The tenant initially testified that she made all of her rent payments on time on the first day of each month. Later during the hearing, the tenant testified that she may have paid rent late a couple of times. As per the above, section 26(1) of the *Act*, the tenants must pay rent when it is due, regardless of whether the landlord complies with the *Act*.

The tenant testified that she did not receive any receipts for her cash rent payments. Later during the hearing, the tenant admitted that she received a couple of receipts for rent from the landlords. The tenant did not provide these receipts as evidence for the hearing and when asked whether she had the receipts in front of her to provide relevant information, she advised that she did not have access to these receipts at this hearing. Although the landlords are required to provide a receipt for cash rent payments, as per Section 26(2) of the *Act*, the tenants must pay rent when it is due, regardless of whether the landlord complies with the *Act*, as per Section 26(1) above.

On a balance of probabilities, I find that the tenants did not pay their rent in full when it was due each month and were frequently late with their rent payments. Both tenants signed and dated the landlords' ledger, acknowledging that they owed the debts and that they "agree to repay a portion of this balance each month and its entirety as quickly as possible" (quoted from the ledger itself). The tenant testified that she and the other tenant, GA, signed the ledger on February 3, 2014 and she returned it to the male agent. She stated that she signed the ledger because she was afraid of being evicted but the ledger does not refer to any threat of eviction if

the tenants did not pay the amounts owing. The landlords testified that they did not threaten the tenants with eviction at any time and that they did not post any notices to try to evict the tenants. The landlords stated at the outset of the hearing that their intention was never to evict the tenants, only to collect the outstanding debt owed by the tenants. No late charges have been, or are, being sought by the landlords. The landlords even offered an opportunity to the tenants, to work to repay the debt. Further, the tenant did not provide any written documentation disputing the amounts owed or responding to the landlords' Application. I find that the tenants owed 12 months' rent at \$850.00 per month, from April 1, 2013 to March 1, 2014, to the landlords, before the property was sold on April 1, 2014. I find that the total rent owing by the tenants to the landlords, for this one year period was \$10,200.00.

There is an outstanding balance of \$2,030.00, which was carried over into March 2013, as per the ledger. These amounts date back to 2012, as per the landlords' evidence. Although the landlords were not able to provide a breakdown for this amount, I am satisfied that it is due and owing from the tenants. Both tenants signed and dated the ledger, acknowledging that they owed the debts, including this \$2,030.00 balance carried forward to March 2013, which was at the top of the first ledger page. I allow the landlords' charge for this outstanding balance in the amount of \$2,030.00.

The landlords are also seeking a \$125.00 carpet cleaning charge incurred on April 1, 2013, as per the ledger. The landlords testified that this charge was necessary for the tenants to move to another unit in the same building, as the carpets required cleaning when the tenants vacated the unit. The tenants were unable to afford the payment, as per the landlords' evidence. The landlords testified that they were unable to apply the security deposit against this \$125.00 charge because the tenant was simply moving to another rental unit in the same building, rather than vacating the building entirely. Again, both tenants signed and dated the landlords' ledger, acknowledging that they owed this \$125.00 carpet cleaning charge which is identified together with the address of the previous rental unit, and is clearly stated in the ledger at the top of the first page. I allow the landlords' carpet cleaning charge in the amount of \$125.00.

I find that the total debt owing to the landlords by the tenants is in the amount of \$12,355.00. I acknowledge that partial payments were made by the tenants to the landlords, totalling \$10,580.00. I find that the tenants paid more than the amount of rent owing which was \$10,200.00 for the 12 month period. I find that these actions of making additional payments over and above rent, demonstrate that the tenants were aware that they owed a debt to the landlords beyond just the rent for this one year period. I find that the tenants had sufficient notice of the outstanding debt owed to the landlords, through the landlord's Application, which includes the ledger that the tenants signed, as well as four in-person meetings that were held between the landlords and tenants, to discuss the debt owing.

I find that the outstanding total amount owed by the tenants to the landlords is in the amount of \$1,775.00.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,825.00 against the tenants as follows:

Item	Amount
March 2013 balance	\$2,030.00
April 1, 2013 carpet cleaning charge from previous apartment	125.00
April 2013 rent	850.00
May 2013 rent	850.00
Less May 11, 2013 payment	-850.00
June 2013 rent	850.00
Less June 1, 2013 payment	-900.00
July 2013 rent	850.00
Less July 2, 2013 payment	-700.00
Less July 11, 2013 payment	-80.00
Less July 14, 2013 payment	-70.00
Less July 29, 2013 payment	-580.00
August 2013 rent	850.00
Less August 2, 2013 payment	-270.00
September 2013 rent	850.00
Less September 3, 2013 payment	-850.00
October 2013 rent	850.00
Less October 3, 2013 payment	-850.00
November 2013 rent	850.00
Less November 9, 2013 payment	-900.00
December 2013 rent	850.00
Less December 2013 (undated) payment	-850.00
January 2014 rent	850.00
Less January 3, 2014 payment	-850.00
Less January 31, 2014 payment	-950.00
February 2014 rent	850.00
Less February 2014 rent payment	-850.00
March 2014 rent	850.00
Less March 2014 payment	-180.00
Less March 2014 rent payment	-850.00
Recovery of Filing Fee for this application	50.00
Total of Above Items	\$1,825.00

The landlords are provided with a monetary order in the amount of \$1,825.00 in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: November 3, 2014

Residential Tenancy Branch

