



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MND, MNR, MNSD, MNDC, FF (Landlord's Application)
CNR, (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to Applications for Dispute Resolution filed by the Landlord and the Tenant which were scheduled to be heard together.

The Tenant applied on September 6, 2017 to cancel a notice to end tenancy for unpaid rent. The Landlord applied on September 6, 2017 for an Order of Possession for unpaid rent, and for a Monetary Order for: unpaid rent; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant; the application disclosed a monetary claim for: unpaid rent; late rent fees; the filing fee; and loss of rent, for a total of \$8,050.00

The Landlord amended her application to increase the monetary claim on September 8, 2017 for anticipated loss of rent because the Tenant had called her to state that he was not going to pay any more rent. The Landlord then completed a second amendment on November 10, 2017 to increase the monetary claim for damage and lack of cleaning to the rental unit.

Preliminary Issues

Both parties appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and no questions as to how the proceeding would be conducted were raised. The parties were given a full opportunity to provide evidence, make submissions, and cross examine the other party on the evidence provided. While I have carefully considered all of the evidence before me, I have only detailed that relevant evidence which I relied upon to make findings in this Decision.

The Landlord confirmed personal receipt of the Tenant's Application. However, the Tenant explained he had moved out of the rental unit and the Landlord had received vacant possession. Accordingly, the Landlord withdrew her application for an Order of Possession and the Tenant's application was dismissed without leave to re-apply.

The hearing continued to deal with the Landlord's monetary claim as follows. The Tenant confirmed personal receipt of the Landlord's original monetary claim and the related evidence. However, the Tenant denied receipt of the Landlord's amended application dated September 8, 2017 and November 10, 2017.

With respect to the Landlord's amended application dated September 8, 2017, the Landlord had sought to increase the amount of anticipated rent loss. Section 64(3) (c) of the Act allows an application to be amended. In addition, Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

"In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing."

[Reproduced as written]

Although the Tenant denied receipt of the Landlord's amended claim for an increased amount of unpaid rent, based on the foregoing, I find it appropriate to allow the Landlord's amended application for the increased amount of rent claimed.

With respect to the second amendment to the monetary claim for damage and repairs to the rental unit, the Landlord stated that she served this to the Tenant by registered mail and that it was sent to an address she had located for the Tenant. The Tenant stated that he did not live at the address used by the Landlord and had never given that address to the Landlord. The Landlord provided the Canada Post tracking number into oral evidence which shows that the documents sent on November 10, 2017 are still in transit and have not yet been received or signed for.

Based on the foregoing, I was not satisfied that the Landlord had served to the Tenant her amended application for damages to the rental unit pursuant to the Act. There was no corroborating or supporting evidence to establish the Tenant was able to receive and sign for documents at the address utilised by the Landlord or that the Tenant provided this address to the Landlord. Therefore, I declined to deal with the Landlord's monetary claim for damages and proceeded to hear the Landlord's monetary claim for unpaid rent and rental losses as follows.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and late payment of rent fees?
- Is the Landlord entitled to rental loss associated with a neighbouring rental suite?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim dealt with in this hearing?
- Is the Landlord entitled to the filing fee and registered mail costs?

Background and Evidence

The parties agreed that this tenancy started on March 31, 2015. A written tenancy agreement was signed which required the Tenant to pay rent on the first day of each month in the amount of \$1,075.00. The Tenant paid a security deposit of \$500.00 by April 6, 2015 which the Landlord still retains. No interest is payable on this amount.

The Landlord testified that on May 25, 2017, the Tenant signed an addendum document to the tenancy agreement which detailed the Tenant's agreement to pay rent in the amount of \$1,200.00 for the following months on these specific dates: May 24, June 21, July 19, 2017 and on the first day of each month thereafter starting August 1, 2017.

The Landlord testified that the Tenant paid rent late for the months of July and August 2017 and then failed to pay rent for September and October 2017, moving out on October 19, 2017. Therefore, the Landlord seeks a total of \$2,400.00 in unpaid rent.

The Landlord also seeks \$200.00 in late rent fees pursuant to a signed tenancy agreement which provided for handwritten instructions that the Tenant would pay \$50.00 for late payment of rent. I noted that the same tenancy agreement at section 10 only provides for a late payment fee of \$25.00. The Landlord was unaware of this provision of the agreement when this was pointed out to her during the hearing.

The Tenant stated that he had paid late rent fees throughout this tenancy and that the Landlord owed him back for overpayment of these fees. In this respect, the parties were unable to agree on the exact amount of times the Tenant had previously overpaid the late payment fee. Therefore, the Tenant was informed of his right to make his own application to deal with this matter raised by him as that issue was not before me.

The Tenant acknowledged that he had paid rent for July, 2017 on July 24, 2017 and that he had paid rent for August 2017 at the end of that month. The Tenant testified that

he paid rent for September 2017. However, the Tenant did not provide a receipt for this payment into evidence. The Landlord disputed the Tenant's alleged payment.

The Tenant testified that he did not pay rent for October 2017 as he had moved out on October 15, 2017. The Tenant did acknowledge that he owed late rent fees, but that this amount should be limited to the \$25.00 amount the Landlord had been informed of in this hearing.

The Landlord claims a total of \$6,600.00 for loss of rental revenue at \$2,200.00 per month which was being paid by the upstairs renters. The Landlord alleges that the Tenant forced the renters out of their suite.

The Landlord alleged that in particular, the Tenant smoked inside the rental unit when it was a no smoking rental unit; the smoke smell then went into the upstairs suite which caused annoyance to the renters.

The Landlord testified that the Tenant would often bang with a stick on the ceiling of his rental unit and often had loud arguments with his occupants which would cause disturbance to the Tenant. In addition, the Landlord stated that the Tenant had approached the children of the renters at their suite and caused them to be scared.

The Landlord testified that the renters had emailed her on August 2, 2017 about the issues they were having with the Tenant and eventually moved out of the rental unit on September 2, 2017. The Landlord confirmed that the renters had not given proper notice to end their tenancy but did allow the landlord to keep their security deposit. The Landlord explained that she did advertise the suite for re-rental on a number of websites but has not been able to re-rent the suite as it is a high end unit. The Landlord did not provide the advertisements into evidence.

The Tenant disputed the Landlord's testimony stating that he did not smoke in the rental unit and there would often be barbeque smells going into the rental property. The Tenant explained that in the early hours of the morning, he heard the renters creating a commotion and he banged his hands on the ceiling as it was not appropriate to be making that level and volume of noise at that time in the morning.

The Tenant stated that he had sought to talk to the renters about this and when he attempted to talk to the parents, the door was answered by their children and he simply asked the renters to contact him. The Tenant denied that he scared the children.

The Tenant stated that he does have arguments with his guests and occupants but these do not create the level of noise testified to by the Landlord. The Tenant submitted that the renters had ended their tenancy because they could not afford the high rent of \$2,200.00 per month, and not because of issues associated with the Tenant.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act unless the tenant has authority to withhold or deduct from rent.

In this case, the Tenant provided no corroborating evidence that he paid the Landlord rent for September 2017, despite claiming he had a receipt for this payment. Therefore, I accept the Landlord's evidence that the Tenant failed to pay rent for September 2017.

Even though the Tenant moved out of the rental unit part way through October 2017, the Tenant would still have been liable to pay rent for the entire month since the Tenant did not comply with any vacancy date on a notice to end tenancy and did not provide one full rental month's notice in order to enable the Landlord to mitigate loss of rent. Therefore, the Landlord is awarded \$2,200.00 in unpaid rent.

With respect to the late rent fee claims by the Landlord, Section 7(1) (d) of the *Residential Tenancy Regulation* (the "Regulation") allows a landlord to charge an administration fee up to \$25.00 for the late payment of rent only if the tenancy agreement provides for this fee. In this case, the tenancy agreement signed by the parties provides for a fee for late payment of rent. However, the Regulation limits this to \$25.00, despite the parties agreeing to a hand written term requiring payment of a \$50.00 fee which I find is not enforceable.

As I am satisfied that the Tenant failed to pay: rent for July 2017 until July 19, 2017; rent for August 2017 at the end of that month; and no rent for September and October 2017, the Landlord is awarded four late rent fees for a total of \$100.00.

With respect to the Landlord's claim for rental loss from the upstairs renters, I dismiss this portion of the claim. This is because the Landlord failed to provide any direct evidence of the alleged actions and disturbances caused by the Tenant and that they constituted a proven reason to end the tenancy. In the absence of any direct evidence from the Landlord or the renters for this hearing, I find the allegations are unproven. Therefore, I am unable to conclude that the renters left solely based on the Tenant's

alleged actions. In addition, I find the Landlord failed to provide corroborating evidence to show that she advertising the rental unit in an effort to mitigated her loss as required by Section 7(2) of the Act, or that she had a complete loss for September 2017 rent.

As the Landlord has been partially successful in this hearing, the Landlord is awarded the filing fee of \$100.00 pursuant to Section 72(1) of the Act. The Act does not allow any party to a dispute resolution proceeding to be awarded mailing or preparation costs. Therefore, the total amount payable by the Tenant to the Landlord is \$2,600.00 (\$1,200.00 + \$1,200.00 + \$100.00 + \$100.00)

As the Landlord already holds the Tenant's \$500.00 security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. The Landlord is issued with a Monetary Order for the outstanding balance of \$2,100.00 (\$2,600.00 - \$500.00).

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant breached the Act by not paying rent and paying rent late. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the balance of unpaid rent, late rent fees, and the filing fee of \$2,100.00. The Landlords' monetary claim for damages to the rental unit is dismissed with leave to re-apply. The Tenants' Application is dismissed without leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 27, 2017

Residential Tenancy Branch