



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR & FFL

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$1800 for unpaid rent
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on April 16, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served by mailing, by registered mail to where the Tenant resides on May 7, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 15, 2018 and continue on a month to month basis. The rent is \$1200 per month payable on the first day of each month. The tenant paid a security deposit of \$600 at the start of the tenancy. The tenant gave a notice by text message that she was leaving at the end of May 2019. The tenant vacated the rental unit on May 18, 2019.

The landlord testified the tenant failed to pay all of the rent for April 2019 and \$600 remains outstanding. He further testified the tenant failed to pay the rent for May 2019 and \$1200 is owed.

The tenant testified she paid the landlord \$600 in cash of April 1, 2019 after borrowing \$400 from a friend to add to the \$200 she had in her possession. She produced a letter from her friend stating she lent the tenant \$400. She testified she withheld \$600 to force the landlord to do repairs. After she received the 10 day Notice to End Tenancy on April 16, 2019 she talked to an information officer at the Residential Tenancy Branch who advised her that she should pay the rent to avoid eviction. She then gave the landlord a cheque in the sum of \$600. She tendered a cheque for May but subsequently put a stop payment on that cheque after the landlord failed to pick it up.

The landlord denies receiving the \$600 that was allegedly paid by the tenant in cash on April 1, 2019. He testified that all previous rent payments had been made by cheque. The 10 day Notice to End Tenancy states the full rent of \$1200 is owed for April. He further submits the tenant failed to provide sufficient evidence to prove the alleged cash payment. The letter from the friend states she lent the money to the tenant but this does not prove the tenant paid it to the landlord.

Analysis - Order of Possession:

It is not necessary to consider the landlord's application for an Order of Possession as the Tenant has vacated the rental unit.

Analysis - Monetary Order and Cost of Filing fee:

After carefully considering all of the evidence I determined the tenant failed to prove she made a cash payment to the landlord of \$600 on April 1, 2019 for the following reasons:

- The tenant failed to provide corroborating evidence to prove the alleged cash payment was made. The tenant did not have a witness who could verify this cash payment was made.

- All previous rent payments had been made by cheque.
- There was tension between the parties relating to the condition of the rental unit and it would be unusual for the tenant to pay by cash thereby varying from the previous practice of paying by cheque when the parties were at odds.
- The Notice to End Tenancy dated April 16, 2019 states the sum of \$1200 is owed and this would be consistent with a failure to pay any rent as of the date Notice to End Tenancy was served.
- I prefer the evidence of the Landlord to that of the tenant as his testimony is more consistent with the other evidence..

I summary I determined the tenant failed to pay \$600 in rent for April 2019 and \$1200 for May 2019 for a total of \$1800.

I determined the landlord has established a claim against the tenant in the sum of \$1800 plus \$100 for the cost of the filing fee for a total of \$1900.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$600. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1300.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$600. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$1300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The tenant alleged she has claims against the landlord. She must first file a Tenant's Application for Dispute Resolution at the Residential Tenancy Branch before those claims can be consider.

This decision is final and binding on both parties.

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 14, 2019

Residential Tenancy Branch