



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- For an order of possession pursuant to having served the Tenants with 10 Day Notice to End Tenancy for Unpaid Rent dated June 3, 2019 ("10 Day Notice");
- For a monetary order of \$4,825.00 for money owed in unpaid rent, claiming the security deposit to hold against this claim; and
- To recover the cost of her filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended for the Respondents. The teleconference phone line remained open for over 40 minutes and was monitored throughout this time. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord. The Landlord indicated that she was ready to proceed.

The Landlord said she served the Tenant with the Application and documentary evidence in person on June 23, 2019. I accept this evidence on a balance of probabilities.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Landlord confirmed her email address at the outset of the hearing and confirmed her understanding that the decision would be emailed to her and mailed to the Respondents, with any orders being sent to the appropriate Parties.

The Landlord said that Tenant, C.C., allowed a man, C.H., to move into the rental unit on approximately May 8 – 10, 2019, but that the Landlord did not add this person to the tenancy agreement. The Landlord had named C.H. on the Application; however, pursuant to Policy Guideline #13 (“PG #13”), I find that C.H. was an “occupant” and not a tenant. PG #13 states:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that C.H. is an “occupant” under the Act (“Occupant”).

The Landlord said that the Tenant and the Occupant moved out on June 30, 2019, so the Landlord no longer seeks an order of possession for the rental unit. As a result, I dismiss the request for an order of possession without leave to reapply.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of her monetary claim?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement, and in the hearing she confirmed that the periodic tenancy began on May 1, 2019, with a monthly rent of \$1,350.00, due on the first day of each month. The Landlord said the Tenant paid her a security deposit of \$675.00, and no pet damage deposit. The Landlord initiated dispute resolution at the RTB on June 17, 2019.

The Landlord said that when she discovered that the Tenant had allowed someone else to move into the rental unit, the Landlord added an Addendum to the tenancy

agreement. The Landlord said that this Addendum requires the Tenant to pay an extra \$100.00 per month for having an additional person in the rental unit, given the increased costs to the Landlord of services and facilities. The Landlord said the Tenant agreed to these terms and signed the Addendum. The Landlord said that she had uploaded the Addendum to the RTB; however, I could not find a copy of it in her submissions.

The Landlord said that she served the Tenant with the 10 Day Notice in person on June 3, 2019, for unpaid rent in May and June 2019. The Landlord said that the Tenant vacated the rental unit on June 30, 2019, after the Landlord agreed to email her \$500.00, as a partial return of the security deposit. The Landlord said that the Tenant would not leave, otherwise.

The Landlord said that her claim of \$4,825.00 in unpaid rent on the Application includes rent through to August 2019. She said she did this in case the Tenant remained in the unit through August 2019. However, the Landlord said she is amending her claim to \$2,900.00 for unpaid rent of \$1,450.00 for each of May and June 2019, plus recovery of the \$100.00 Application filing fee, for a total of \$3,000.00.

Analysis

Based on the documentary evidence and the testimony before me in the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that she was owed \$2,900.00 in unpaid rent as of June 2, 2019. There is no evidence before me that the Tenant had a right under the Act to withhold any of her rent owing.

In terms of the \$100.00 increase in rent for the Occupant, Part 3 of the Act addresses allowable rent increases. Section 40 sets out the meaning of "rent increase", as follows:

- 40** In this Part, "**rent increase**" does not include an increase in rent that is
- (a) for one or more additional occupants, and
 - (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Section 13(2)(f)(iv) states that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

13 (2) (f) the agreed terms in respect of the following:

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Based on the undisputed testimony before me, I find that the Addendum sets out that the monthly rent in this rental unit increased by \$100.00 with the increase of one occupant. Therefore, I find that the monthly rent in the rental unit was \$1,450.00.

Based on all the evidence before me overall, I find the Landlord suffered a loss of May and June 2019 rent in the amount of \$2,900.00, and that the Tenant is responsible for compensating the Landlord in that amount. As I find the Landlord has met the burden of proof, I award the Landlord **\$2,900.00** from the Tenant for this claim.

As the Landlord's Application had merit, I grant the Landlord full recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act. In total, I grant the Landlord a monetary order of \$3,000.00.

The Landlord continues to hold the Tenant's remaining security deposit of \$175.00, which has not accrued any interest. I authorize the Landlord to retain the remaining \$175.00 of the security deposit in set off against the monetary order. After set off, I grant the Landlord with a monetary award of **\$2,825.00**.

Conclusion

The Tenant did not attend the teleconference hearing, nor did an Agent appear on her behalf. The Landlord attended the hearing and advised that the Tenant moved out on June 30, 2019, and that the Landlord no longer needs an order of possession. I dismiss this claim without leave to reapply.

The Landlord's claim for recovery of unpaid rent was successful in the amount of \$2,900.00, as was her claim for recovery of the \$100.00 Application filing fee for a total award of \$3,000.00.

The Landlord paid the Tenant \$500.00 of the security deposit at the end of the tenancy, leaving a remaining security deposit amount of \$175.00. I authorize the Landlord to set off the remaining security deposit against the \$3,000.00 award; I grant the Landlord a monetary order under section 67 of the Act from the Tenant in the amount of **\$2,825.00**.

This order must be served on the Tenant by the Landlord 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: July 16, 2019

Residential Tenancy Branch