



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BSM PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL –S, FFL

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent; and, a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit. The landlord's agent appeared at the hearing; however, there was no appearance on part of the respondents/tenants.

Since the respondents/tenants did not appear at the hearing, I explored service of hearing documents upon them. The landlord's agent testified that she personally served the named female respondent with the hearing documents at the rental unit on June 30, 2019 and she personally served the named male respondent at his daughter's unit which is located in the same building, also on June 30, 2019. I was satisfied the respondents were duly served with notification of this proceeding and I continued to hear from the landlord without the respondents present.

The landlord's agent pointed out that she erred in recording the unit number on the Application for Dispute Resolution and that it should read unit 14. Upon review of the 10 Day Notice to End Tenancy for Unpaid Rent submitted as evidence I noted that the unit is identified as being 14 on the 10 Day Notice. Accordingly, I was satisfied the landlord made a typographical error in completing the Application for Dispute Resolution and the respondents would have known, or ought to have known, the unit number of the rental unit and I amended the style of cause to reflect the correct unit number.

The landlord's agent stated the tenant(s) gave up possession of the rental unit at the end of July 2019 and confirmed that an Order of Possession is no longer required. Rather, the only issue to resolve is the landlord's monetary claim for unpaid rent. Accordingly, I do not provide an Order of Possession with this decision and I turn my mind to the landlord's monetary claim.

I noted that I did not have a copy of the tenancy agreement before me. The landlord's agent testified that the rent for the unit is \$550.00 per month and the landlord's agent and there was a written tenancy agreement in place with the female tenant only starting on December 15, 2018; however, the female tenant informed the landlord she was moving out as of April 30, 2019. The landlord then entered into a written tenancy agreement with the male tenant starting on April 30, 2019 for rent in the amount of \$550.00. The landlord's agent testified that the female tenant was gone for a short while and then returned to live in unit 14 with the male tenant. The landlord's agent stated the male and female respondents are spouses. The landlord's agent acknowledged that she did not obtain any written documentation to add the female respondent to the tenancy agreement that formed with the male tenant.

Based on what the landlord's agent stated, I was satisfied that the tenancy with the female tenant ended on April 30, 2019 and a new tenancy started with the male tenant on that same date. The fact that the female tenant returned to live in the unit does not in itself create a tenancy or an obligation for the female tenant to pay rent to the landlord after April 30, 2019. Rather, the female tenant may very well have been an occupant of the unit under the male tenant's agreement after April 30, 2019. Since the landlord's claims for unpaid rent relate to May 2019 and June 2019 I find the landlord has only satisfied me that it has a claim against the male tenant. Therefore, I amended the style of cause to reflect the name of the male tenant only.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid and/or loss of rent for May 2019 and June 2019?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

As described previously in this decision, I heard that a tenancy started on April 30, 2019 requiring the tenant to pay rent of \$550.00 per month. The landlord's agent testified that a security deposit of \$225.00 was collected and the rent was payable on the first day of the month.

I noted that the landlord's Application for Dispute Resolution indicates the security deposit was listed as being \$250.00. The landlord's agent stated that was a typographical error and that the security deposit was actually \$225.00.

The landlord submitted that the tenant failed to pay rent for May 2019 and June 2019. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent but the tenant did not pay the outstanding rent. The landlord made this Application for Dispute Resolution seeking compensation for unpaid rent of \$1,100.00 on June 27, 2019.

The landlord also stated the tenant failed to pay rent for July 2019 and vacated the unit at the end of July 2019. I did not permit the landlord to amend the claim to add loss of rent for July 2019 to the claim during the hearing because the tenant was not served an Amendment and the tenant was not at the hearing to respond to the allegations that rent was not paid for July 2019 and he did not vacate the rental unit until the end of July 2019. As such, I informed the landlord's agent of the landlord's right to make another Application for Dispute Resolution to make claims for any additional losses the landlord may have incurred as a result of the tenant's breach of the tenancy agreement, Act or Regulations.

Analysis

I accept the unopposed evidence that the tenant was required to pay rent of \$550.00 per month starting April 30, 2019 and that he failed to do so for the months of May 2019 and June 2019.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not provided any evidence to suggest the tenant had a legal right to withhold rent that was due under his tenancy agreement.

In light of the above, I find the landlord entitled to recover \$1,100.00 in unpaid and/or loss of rent for the months of May 2019 and June 2019 as requested and I award that amount to the landlord.

I further award the landlord recovery of the \$100.00 filing fee.

I authorize the landlord to retain the tenant's security deposit of \$225.00 in partial satisfaction of the rent owed to the landlord.

Based on my findings and awards above, I provide the landlord a Monetary Order in the net amount of \$975.00 [calculated as \$1,100.00 + \$100.00 - \$225.00] to serve and enforce upon the tenant.

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$975.00 to serve and enforce upon the tenant.

The landlord remains at liberty to file another Application for Dispute Resolution to seek recovery of other damages or losses, if any, against the tenant other than the unpaid and/or loss of rent for May 2019 and June 2019.

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: August 16, 2019

Residential Tenancy Branch