



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 20, 2019 (the “Application”). The Landlord applied for compensation for damage to the unit, to recover unpaid rent, for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 05, 2019 and for reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenants appeared at the hearing 15 minutes late. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Landlord advised that the Tenants vacated the rental unit June 30, 2019. The Landlord confirmed she is no longer seeking an Order of Possession.

In relation to the request for compensation, the Landlord had set out that she was seeking \$700.00 but had not provided an outline of what she was seeking the \$700.00 for beyond damages generally. I asked the Landlord why she was seeking the \$700.00 and she indicated this was in part for carpet cleaning, painting and damage to baseboards. The Landlord could not point to where this was outlined in the Application and it was not clear to me where this was outlined in the Application.

Section 59 of the *Residential Tenancy Act* (the “Act”) states:

(2) An application for dispute resolution must...

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings...

In a monetary claim, including full particulars means outlining not just the total amount that is being sought but the basis for that amount. This is so that the respondent knows why the applicant is claiming the amount stated and can prepare to address the claim.

I was not satisfied the Application included full particulars of the claim for \$700.00 for damages and therefore I advised the parties that this claim would be dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

Tenant G.B. provided her correct legal name and this is reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It was between the Landlord and Tenant G.B. The tenancy started October 01, 2018 and was a month-to-month tenancy. Rent was \$1,700.00 per month due on the first day of each month. The agreement was signed by the Landlord and both Tenants. The parties agreed both Tenants were tenants under the agreement.

The Landlord testified that the Tenants did not pay June rent.

Tenant G.B. agreed the Tenants did not pay June rent. Tenant G.B. testified about trying to provide the Landlord a cheque for June rent but the Landlord failing to pick the cheque up. Tenant G.B. testified that the Tenants vacated the rental unit June 27, 2019. Tenant G.B. testified that the Tenants did not pay June rent because the Landlord did not pick the cheque up. She also testified that the Tenants did not pay

June rent because the Landlord evicted them and they had to move from the rental unit. She submitted that she should not have to pay June rent because of the costs associated with moving.

The Landlord called M.K. as a witness. I did not find her testimony relevant to the issues before me given the testimony of the parties as outlined above.

The Tenants confirmed their witness was not relevant to the issue of unpaid rent.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent when it is due under the tenancy agreement unless they have right under the *Act* to withhold rent.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

There is no issue that the Tenants were required to pay \$1,700.00 in rent for June by June 01, 2019 as this is set out in the tenancy agreement which the parties agreed is accurate.

There is no issue that the Tenants did not pay June rent as Tenant G.B. acknowledged that the Tenants did not do so.

Tenant G.B. testified that the Tenants did not pay rent because the Landlord did not pick up the rent cheque and the Landlord evicted them which required them to move. Tenant G.B. submitted that the Tenants should not have to pay June rent because of the costs associated with moving.

There are six reasons tenants can withhold rent including the following:

1. Section 19 of the *Act* where the Landlord has collected more than the allowable amount for a security or pet damage deposit;
2. Section 33 of the *Act* in relation to emergency repairs;
3. Section 43 of the *Act* in relation to an illegal rent increase;

4. Section 51 of the *Act* in relation to being served with a notice to end tenancy under section 49 of the *Act*;
5. Section 65 of the *Act* where an arbitrator permits rent to be withheld; and
6. Where the Landlord consents to rent being withheld.

It was the responsibility of the Tenants to get rent to the Landlord by June 01, 2019. Any failure by the Landlord to pick up the rent cheque does not relieve the Tenants of their obligation to pay rent under the tenancy agreement.

The Tenants did not have authority under the *Act* to withhold rent because the Landlord evicted them and therefore they had to move. The Tenants were issued a notice to end tenancy because they failed to pay rent as required. Being evicted on this basis does not relieve the Tenants of their obligation to pay rent for the time they resided in the rental unit.

Nor should the Tenants be relieved of their obligation to pay June rent because they had to move and pay the costs associated with this. This is not a valid basis to withhold rent.

The Tenants have not provided a valid basis under the *Act* for withholding rent. Therefore, the Tenants are obligated to pay June rent pursuant to the tenancy agreement and section 26(1) of the *Act*.

I acknowledge that the parties disagreed about when the Tenants vacated the rental unit. Whether the Tenants vacated June 27, 2019 or June 30, 2019, I find they owe rent for all of June as rent is due on the first day of the month and the Tenants lived in the rental unit for the majority of June.

The Landlord is entitled to \$1,700.00 in unpaid rent for June.

Given the Landlord was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Tenants must pay the Landlord \$1,800.00. The Landlord is issued a Monetary Order in this amount.

Conclusion

The Tenants must pay the Landlord \$1,800.00. The Landlord is issued a Monetary Order in this amount. If the Tenants do not pay the Landlord \$1,800.00, this Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 08, 2019

Residential Tenancy Branch