



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 30, 2019 (the “Application”). The Landlord sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

This matter came before me May 21, 2019 and an Interim Decision was issued May 23, 2019. This decision should be read with the Interim Decision.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

At the adjourned hearing, the Tenant confirmed receipt of the full rent ledger at issue during the first hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. 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 keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$5,728.00 in unpaid rent and utilities from November 2015 to March 2017.

A written tenancy agreement was submitted as evidence. The parties agreed this is the tenancy agreement they signed. The tenancy started November 01, 2015 and was a month-to-month tenancy. Rent was due on the first day of each month.

The tenancy agreement states rent was \$1,500.00. The parties agreed rent was actually \$2,000.00 although they disagreed about why it was \$2,000.00. The parties agreed the Tenant was responsible to pay \$332.00 per month for utilities.

The Landlord testified that the tenancy ended March 04, 2017. The Tenant testified that it ended February 28, 2017.

The Landlord sought to keep the security deposit. However, at the hearing, the Landlord testified that the Tenant never paid a security deposit. The Landlord testified that some of the monies paid could be considered the security deposit. He said no specific payment for the security deposit was made.

The Tenant testified that she did not pay a security deposit because it was agreed between the parties prior to the tenancy agreement that she did not have to and that her and her husband would do work on the rental unit in lieu of paying a security deposit.

The Landlord submitted a rent ledger. It shows that \$3,728.00 in unpaid rent was outstanding February 01, 2017. It shows March rent of \$2,000.00 as outstanding. It shows a total of \$5,728.00 outstanding.

The Tenant acknowledged signing the rent ledger showing \$5,728.00 outstanding. She testified that the Landlord made her sign it. The Landlord denied making the Tenant sign the rent ledger.

The Tenant took the position that the rent ledger is incorrect. She testified that the following amounts should be deducted from the \$5,728.00 outstanding:

- \$2,000.00 for November rent;
- \$1,000.00 for a payment made in December; and
- \$1,000.00 for the security deposit.

The Tenant testified as follows. She does not owe for November rent. She paid November rent but the Landlord gave this money back because of issues with the rental unit at the start of the tenancy. She made a \$1,000.00 payment in December to the Landlord's wife which is not reflected on the rent ledger.

At the first hearing, the Tenant testified that \$1,332.00 in rent was outstanding. At the second hearing, I pointed out to the Tenant that the \$5,728.00 minus the \$3,000.00 equals \$1,728.00 not \$1,332.00. The Tenant then said the \$1,332.00 was just a guess and agreed that \$1,728.00 is currently outstanding. The Tenant acknowledged she did not have authority under the *Residential Tenancy Act* (the "Act") to withhold \$1,728.00 in rent.

The Landlord testified that the Tenant told him in November that she did not have enough money for food and therefore he allowed her to use November rent for food. His position is that the Tenant still owes this money.

I understood the Landlord to testify that March rent is included in the outstanding rent amount because the tenancy ended March 04, 2017. He testified that the rental unit was not re-rented until April. The Landlord testified that he issued the Tenant a 10 Day Notice with an effective date sometime in February of 2017 and that eventually the Tenant moved out. He said no further notices were exchanged. The Landlord testified that he could not rent the unit out for March because the Tenant was in it until March 04, 2017.

The Tenant testified that she moved out of the rental unit February 27, 2019. She disputed that the rental unit was not rented for March and said the new tenants were at the rental unit the day she moved out. The Tenant testified that the tenancy ended further to a One Month Notice issued February 01, 2017. She testified that she accepted the One Month Notice. She denied that the Landlord issued a 10 Day Notice.

The Landlord submitted a 10 Day Notice addressed to the Tenant and co-tenant dated February 21, 2017 with an effective date of March 03, 2017.

Analysis

I find the Tenant never paid a security deposit. The Landlord took this position initially and acknowledged that no specific payment was ever made for the security deposit. The Tenant testified that she never paid a security deposit. The rent ledger indicates that the Tenant did not pay a security deposit. I consider the payments made as shown on the rent ledger to be payments for rent and utilities.

I note that the Landlord cannot now collect a \$1,000.00 security deposit as the tenancy is over. The purpose of a security deposit is for the Landlord to hold monies in trust during the tenancy to be used at the end of the tenancy for damage or monies owing. It is not an amount that is otherwise owed to the Landlord and not an amount owed to the Landlord at this point.

Section 7(1) of the *Act* states that a party who does not comply with the *Act* or their tenancy agreement must compensate the other party for damage or loss that results.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the agreement of the parties, I find the Tenant owed \$2,000.00 in rent and \$332.00 in utilities each month in relation to this tenancy.

The Landlord took the position that the rent ledger is correct as to the outstanding amount of \$5,728.00. The Tenant disputed this amount for the three issues outlined above. The Tenant acknowledged owing the Landlord \$1,728.00.

The parties took different positions about whether November rent is owed. The rent ledger shows that November rent in the amount of \$2,000.00 is owed. The Tenant signed the rent ledger at the end of the tenancy. The Tenant testified that the Landlord made her sign the rent ledger. The Tenant submitted no evidence to support her testimony on this point. In the absence of evidence to support the Tenant's testimony, I do not accept that the Landlord made her sign the rent ledger.

I find the Tenant's signature on the rent ledger indicates agreement with the rent ledger. Based on the rent ledger, I am satisfied the Tenant owes for November rent. I also find

this given the Tenant submitted no evidence to support her testimony that November rent was not owed. I acknowledge that the Landlord has the onus to prove the claim. The Landlord has done so through the signed rent ledger.

The Tenant testified that she made a \$1,000.00 payment in December that was not recorded on the rent ledger. I am satisfied the rent ledger is accurate given the Tenant signed it and given my comments above. The Tenant did not submit any evidence to support her testimony that she made a \$1,000.00 payment in December. I do not accept that the Tenant did.

As stated above, the \$1,000.00 security deposit is not owed at this point.

The parties disagreed about when the Tenant vacated the rental unit. Based on the 10 Day Notice submitted, I prefer the testimony of the Landlord on this point. The Tenant did not submit evidence of being served a One Month Notice. The 10 Day Notice has an effective date of March 03, 2017. I accept that the Tenant did not vacate the rental unit until March 03, 2017 or March 04, 2017.

I also find the Tenant did not vacate the rental unit until March because the rent ledger indicates the Tenant owes for March rent. I do not accept that the Tenant would agree to March rent being outstanding if she vacated the rental unit at the end of February.

The Tenant did not submit any evidence to support her testimony that she vacated at the end of February. Again, I acknowledge that the Landlord has the onus to prove the claim. The Landlord has done so through the 10 Day Notice and signed rent ledger.

I find the Tenant agreed March rent was outstanding. I also accept that the Landlord could not re-rent the unit until April given the Tenant did not vacate until March 03, 2017 or March 04, 2017.

Given the above, I accept that the signed rent ledger is accurate and find the Tenant owes \$4,728.00 in unpaid rent and utilities from November 01, 2015 to March of 2017. I have deducted the \$1,000.00 security deposit from this as the Landlord is not now entitled to this amount given the tenancy is over.

I find the Tenant did not have authority under the *Act* to withhold rent given the Tenant's testimony on this point and my findings above.

The Landlord is entitled to recover the \$4,728.00 in unpaid rent and utilities.

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

In total, the Landlord is awarded \$4,828.00 and the Landlord is issued a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$4,828.00. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court 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: September 25, 2019

Residential Tenancy Branch