



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Matters

The landlord's property manager, their sister, gave sworn testimony that they sent the tenant a copy of their dispute resolution hearing package and Monetary Order Worksheet to the tenant at the rental unit by registered mail on June 14, 2019. They provided written evidence in the form of the Canada Post Tracking Number to confirm this registered mailing. The property manager said that Canada Post's Online Tracking System revealed that a card was left by Canada Post for the tenant at that address on June 17, 2019. When the initial hearing package was not picked up by the tenant, the property manager testified that on July 2, 2019, they sent another copy of that material to the tenant by registered mail to the forwarding address given to the landlord on June 19, 2019, at the time of the joint move-out condition inspection. The tenant said that neither of these packages were delivered to them, and that they only learned of this

hearing and application when they were notified directly by the Residential Tenancy Branch in a recent email.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Section 15 of Residential Tenancy Branch Policy Guideline 12 on Service Provisions reads in part as follows:

...Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report...

Although the tenant maintained that they were not actually residing in the rental unit by mid-June 2019, I heard no evidence that the landlord was advised of this prior to the property manager having sent this package to the tenant by registered mail on June 14, 2019. The tenant also confirmed that they did attend the rental unit on June 19, 2019 for the purposes of the scheduled joint move-out condition inspection and to return the keys to the landlord. I find in accordance with sections 88, 89(1) and 90 of the *Act*, that the tenant was deemed served with the landlord's dispute resolution hearing package and written evidence attached to the application on June 19, 2019, five days after the property manager's registered mailing to the tenant at the address the tenant still had possession of during this tenancy. In the event that the tenant was no longer residing in the rental unit by June 14, 2019, and the landlord had been advised of this, I also find

that the property manager's subsequent registered mailing of this material on July 2, 2019 to the tenant at the address they provided as their forwarding address, also satisfies the landlord's responsibilities for serving the tenant with a copy of the hearing package and attached documents pursuant to sections 88, 89(1) and 90 of the *Act*, again on the fifth day after this material was mailed.

At the hearing, the landlord reduced the amount of their requested monetary award from \$11,250.00 to \$9,000.00, as the landlord was able to re-rent the premises as of July 31, 2019. The amount of the requested monetary award is hereby reduced to \$9,000.00 plus the recovery of the landlord's filing fee.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On January 31, 2019, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) that was to cover the period from February 7, 2019 until August 7, 2019. Monthly rent was set at \$2,250.00, payable in advance on the first of each month. Although the tenant paid a security deposit of \$1,125.00 on February 1, 2019, the value of that deposit has decreased to \$1,025.00 as a result of a decision issued by another Arbitrator appointed pursuant to the *Act* on May 30, 2019 (see above).

On April 3, 2019, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) for \$2,250.00 in rent that was then outstanding for April 2019. At the May 30, 2019 hearing and as reported in the decision issued on that date, the presiding Arbitrator dismissed the landlord's application for a monetary award for unpaid rent with leave to reapply. However, they allowed the landlord's application to end this tenancy on the basis of the 10 Day Notice (see above). At that hearing, the tenant's cross-application was limited to a consideration of their application to cancel the 10 Day Notice and to obtain the recovery of the tenant's filing fee. The remainder of the tenant's application was dismissed with leave to reapply. The tenant confirmed that they have not yet filed any new application with respect to this tenancy.

Although the Arbitrator at the May 30, 2019 hearing reported that this tenancy ended on April 13, 2019, the effective date identified in the landlord's 10 Day Notice, and issued a 2 Day Order of Possession, the tenant applied for a review of that decision. Another Arbitrator appointed pursuant to the *Act* issued a review consideration decision on June 17, 2019, dismissing the tenant's application to have the May 30, 2019 decision reviewed (see above). The parties agreed that the tenant yielded vacant possession of the rental unit to the landlord on June 17, 2019, at which time the tenant provided the landlord with their forwarding address in writing at the time of their joint move-out condition inspection.

The landlord filed their current application for dispute resolution on June 5, 2019, in which they sought a monetary award for unpaid rent from April 2019 until August 2019. Their application also sought authorization to offset the amount of their requested monetary award by the amount of the security deposit, by then reduced to \$1,025.00, as a result of the May 30, 2019 decision.

The property manager testified that they sent the \$1,025.00 security deposit to the tenant at the address they provided as their forwarding address on July 2, 2019, by registered mail. However, their registered mailing was not delivered and the landlord continues to hold the tenant's \$1,025.00 security deposit.

At the hearing, the landlord said that they located a new tenant for this rental suite in mid-July 2019. That new tenant took possession of the premises on July 31, 2019. The landlord said that they could not get someone in to the rental unit to steam clean the rental unit until mid-July 2019, so their advertisements on a furnished apartment website did not lead to any showings of the rental unit until that steam cleaning had occurred.

The tenant did not dispute the landlord's claim that rent was not paid for April, May, June or July. The tenant said that the landlord had advised them early in this tenancy that they would not hold the tenant to the terms of the fixed term tenancy. The tenant said that there were deficiencies in the rental unit, which led them to live elsewhere for the month of June 2019, although they did not give up possession of the premises until June 19, 2019. The tenant did not believe that the landlord should be entitled to rent beyond the date that they vacated the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant contravened the terms of their Agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “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.”

I find that the tenant was in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the August 7, 2019 date specified in that Agreement. As such, the landlord is entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for April, May, June and July 2019. There is undisputed evidence that despite the landlord's determination that this tenancy ended on April 13, 2019, the tenant continued to occupy the rental unit until after their request for reconsideration of the May 30, 2019 decision was reviewed by another Arbitrator. The tenant surrendered possession of the rental unit to the landlord on June 19, 2019. Under such circumstances, I find it highly unlikely that a landlord placed in this situation, and without knowing whether the tenant would actually leave the rental unit as ordered on May 30, 2019, would have any realistic opportunity to re-rent the premises for the remainder of June 2019. As such, I allow the landlord's claim for unpaid rent owing for the months of April, May and June 2019.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I find that the landlord did not attempt to the extent that was reasonable to have the premises re-rented as quickly as possible so as to minimize the tenant's exposure to the landlord's loss of rent for July 2019. As such, I dismiss the landlord's claim for loss of rent for the month of July 2019,

as the landlord has not discharged their duty under section 7(2) of the *Act* to minimize the tenants' loss for that month.

With respect to the landlord's application to retain the security deposit in partial satisfaction of the monetary award claimed for unpaid rent, paragraph 72(2)(b) of the *Act* reads in part as follows:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted...
(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant...

Since the landlord applied to retain the tenant's security deposit before the 15 day time period for returning that deposit had expired, I reduce the amount of the landlord's entitlement to a monetary award by the \$1,025.00 value of that deposit, pursuant to paragraph 72(2)(b) of the *Act*.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

During this hearing, the tenant stated their own concerns about deficiencies in this tenancy, including those with respect to their security deposit. I emphasize that this decision addresses only the landlord's application and does not consider any possible monetary award the tenant is entitled to receive arising out of this tenancy. No such applications from the tenant are before me.

Conclusion

I issue a monetary Order under the following terms, which allows the landlord a monetary award for unpaid rent and loss of rent, and for the recovery of the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid April 2019 Rent	\$2,250.00
Unpaid May 2019 Rent	2,250.00
Unpaid June 2019 Rent and Loss of Rent	2,250.00

for June 2019	
Less Value of Security Deposit	-1,025.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5,825.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: September 20, 2019

Residential Tenancy Branch