



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

1. Authorization to recover the filing fees from the tenant pursuant to section 72;
2. A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
3. A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
4. An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The landlord and the tenant appeared for the scheduled hearing. The landlord was represented by the landlord's spouse, RG ("landlord"). Tenant AW represented the tenants ("tenant"). The tenant confirmed that he received the landlord's notice of hearing package. No documentary evidence was submitted by the tenant.

Preliminary Issue – partial settlement reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, with the exception of issue 3, outstanding partial rent for June and rent for the month of July 2019. The parties sought arbitration of this issue and a final, binding and enforceable decision on it.

1. This tenancy will end at 1:00 P.M. on October 1, 2019, by which time the tenants and any other occupant will have vacated the rental unit.
2. Both parties agree that this tenancy ends by way of this agreement and the 10 Day Notice is cancelled and of no further force or effect.
3. The rights and obligations of the parties under the *Act* continue until the tenancy ends in accordance with this agreement.
4. The parties will conduct a Condition Inspection Report on October 1, 2019 at 1:00 P.M.
5. The tenants acknowledge they owe arrears for the months of August and September 2019 in the sum of \$6,240.00.
6. The parties agree that the landlord is to retain the security deposit and pet damage deposit totaling \$3,000.00 in partial satisfaction of the outstanding arrears.
7. The landlord acknowledges that on September 22nd, she received \$200.00 to be applied towards the outstanding arrears.
8. The issue of whether rent for the month of July, 2019 and partial rent for the month of June 2019 remains outstanding will be left to the arbitrator to make a final, binding and enforceable order.

Both parties testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle these aspects of this dispute.

Issue(s) to be Decided

Does the tenant owe rent for part of June 2019 and all of July 2019?

Background and Evidence

The landlord provided the following testimony. The rental unit comprises an entire house. There is a separate coach house on the property, however the tenants occupy the main house. The landlord purchased the property in August 2017 and rented the unit to the tenants on August 6, 2017. Partial rent was collected in August 2017, however full rent was collected on the 1st day of each month in the amount of \$3,000.00. A security deposit of \$1,500.00 and pet damage deposit of \$1,500.00 was collected and is being held by the landlord.

The rent was increased to \$3,120.00 in November 2018. The parties agree that the rent is paid in cash and the landlord had not provided rent receipts throughout the tenancy as there were never any issues with late payment of rent. The landlord testified the tenants began to start paying late rent in June of 2019 after there was an inspection of

the rental unit done by the city. Only partial payment of June rent was made and no rent was received for the month of July 2019. The city is now issuing daily fines to her because of the tenancy.

Since the inspection, the tenants have not paid any rent with the exception of \$200.00 she acknowledges receiving on September 22nd for which she has supplied a receipt.

The landlord's agent served the tenants with a 10 Day Notice for Unpaid Rent on July 4, 2019 by registered mail. A copy of the tracking number is listed on the cover page of this decision. The Notice, dated July 3, 2019, indicates the tenants failed to pay rent in the amount of \$4,480.00 that was due on July 1, 2019. The tenant acknowledges receiving the Notice but did not file for dispute resolution.

The tenant testified that he is unsure about whether rent was paid for part of June or all of July and thinks it likely was paid. Since there are no rent receipts, he's unable to say for sure. When the city inspector came to see the rental unit, the landlord told him in exasperation that she will move into the unit. The tenant felt that he should be compensated for the landlord's ending of the tenancy for this. He submits that he has been behind in rent before but it has always been OK with the landlord. It was only after the inspection from the city that any of the 'stuff' happens.

The landlord submits that when the 10 Day Notice was given, the \$4,480.00 showing as outstanding represents the remainder of the unpaid portion of the June rent (\$1,360.00) and the full month of July's rent (\$3,120.00). While the tenant is unsure whether he paid the rent, she is positive it wasn't paid and cites the dollar amount on the Notice as proof.

Analysis

Sections 26(1) and 26(2) indicate the following:

- 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.
- 2) A landlord must provide a tenant with a receipt for rent paid in cash.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the matter before me, neither party has documentary evidence to show a ledger of rent

payments. Especially troubling is the landlord's failure to provide rent receipts as required under section 26(2) of the *Act*.

Despite this, the tenant has testified that he simply doesn't recall whether there are arrears for June and July; it's possible it was paid but equally plausible that it wasn't. The landlord points to the Notice as her proof that as of July 3rd, the date the Notice was signed, the tenants were in arrears for June and July. She also provided testimony that she is sure the tenants didn't pay, there is no doubt in her mind. Lastly, the landlord points to her ready admission that the tenants paid \$200.00 towards arrears on September 22nd as further proof of her willingness to ensure the accounts are accurate.

I find that on a balance of probabilities, the landlord's version of the events is likely the more accurate. Based on the amount listed on the Notice that as of July 3rd, it appears the tenants had not paid the remainder of the June rent or any of the July rent. The tenant's testimony that he felt he may be entitled to compensation for ending the tenancy also indicates to me that the tenant may have felt justified in not paying rent. I am satisfied the tenants did not pay rent for part of June (\$1,360) and all of July (\$3,120.00) and I award the landlord compensation in the amount of **\$4,480.00**.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
June 2019 rent	\$1,360.00
July 2019 rent	\$3,120.00
August 2019 rent	\$3,120.00
September 2019 rent	\$3,120.00
Security deposit	(\$1,500.00)
Pet damage deposit	(\$1,500.00)
September 22 arrears payment	(\$200.00)
Filing fee	\$100.00
Total	\$7,620.00

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession. The parties agree that the tenants are to vacate the rental unit by 1:00 P.M. on October 1, 2019, and the landlord is to serve this Order of Possession immediately and enforce it as early as 1:01 PM on October 1, 2019, should the landlord choose to do so.

I issue a monetary Order in the landlord's favour in the amount of **\$7,620.00**.

This decision is final and binding on the parties.

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 27, 2019

Residential Tenancy Branch