



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant attended the hearing and the landlord attended the hearing with her advocate, LC. As both parties were in attendance, service of documents was confirmed. The tenant acknowledges being served with the landlord's Notice of Dispute Resolution Proceedings package and stated there were no concerns with timely service of documents. The tenant did not provide any documentary evidence for these proceedings.

Preliminary Issue

The landlord advised that he application had been amended to include a monetary order for compensation for damages to the rental unit. The tenant disputes he was served with any such amendment. I reviewed the landlord's proceedings and was unable to find a filed form RTB-42, Amendment to an Application for Dispute Resolution, despite reviewing the landlord's materials during the hearing. As I could not determine such an amendment was filed in accordance with Residential Tenancy Rules of Procedure Rule 4, this hearing was limited to the landlord's application to be compensated for unpaid rent pursuant to section 67 of the *Act*. The landlord retains the right to file a subsequent Application for Dispute Resolution to seek further compensation for damages.

Issue(s) to be Decided

Is the landlord entitled to an order for compensation for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was filed by the landlord. The fixed one-year tenancy began on September 1, 2018. Rent was set at \$1,850.00 per month, payable on the first day of each month. A security deposit of \$925.00 was collected which the landlord continues to hold it. The landlord testified that a condition inspection report was completed at the commencement of the tenancy.

The landlord provided the following testimony. On June 7th, the tenant called her asking if he could sublet the rental unit. The landlord denied the request indicating the tenancy only had 3 months left and that the strata would not allow a sublet. The landlord testified that she gave the tenant a One Month Notice To End Tenancy for Cause for the subletting, then eventually gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 13, 2019. The effective date of the Notice is July 23, 2019.

The tenant responded to the 10 Day Notice with a handwritten letter, provided as evidence in these proceedings. In this letter, the tenant acknowledges the Notice and notifies the landlord he would be vacating the rental unit in accordance with the Notice. The letter continues:

The eviction notice was served due to unpaid rent. The rent was unpaid because half of the rent (\$925) was manually transferred on 07/01. It was informed to the landlord that the other half would be transferred manually as well, still the landlord deposited a cheque for \$1,850.00 against the \$925.00 owed.

...

My friends (names withheld for privacy) had informed the landlord about me transferring the other half manually as I was away from the country with no access to phone. The rent in question is for the month of July.

...

The landlord testified that on July 1st, she had deposited the post-dated rent cheque to her bank which was returned as insufficient funds. The following day, on July 2nd, the tenant had provided her with an e-transfer of funds for \$925.00. The tenancy didn't end until the effective date of the tenancy, or July 23rd, and the landlord testified she is entitled to rent until the end of the month.

The landlord testified that when she got the letter dated July 16th from the tenant, she sought to schedule a condition inspection report date with him for July 21st. The tenant did not show up to do the inspection, so the landlord gave the tenant a Final Opportunity to conduct a condition inspection report with her on July 23rd. Again, the tenant did not show up and the landlord conducted the inspection alone. The Final Opportunity to conduct a condition inspection report was provided as evidence by the landlord.

The tenant provided the following testimony. The story of the subletting is not true. He had friends come over while searching for an apartment. They were 'helping him out' by paying him for the moment, but he was going to pay them back.

The tenant acknowledges writing the letter dated July 16th. He testified that while the letter shows he agreed to pay the remainder of the rent for July, he was unable to do so because his account was overdrawn. He attributed the overdrawn status to the landlord cashing the original rent cheque while having half a month's rent from a 'manual transfer' she received. He testified that the landlord had given him assurances that he would be allowed to stay if he gave her the remaining \$925.00 in rent for July. He testified he was 'forced to vacate' the rental unit and because of that issue, and because the landlord disposed of his furniture after the effective date of the Notice, he changed his mind and no longer wants to compensate the landlord for the lost rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Rules about payment and non-payment of rent

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.

Liability for not complying with this Act or a tenancy agreement

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

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Whether the tenant did or did not sublet the rental unit is not the issue to be decided here. The decision to be made is whether the tenant should be required to pay the remainder of the rent for July.

The tenancy agreement provides that the rent of \$1,850.00 is due on the first day of the month. Neither party indicated the tenant had any right to deduct all or a portion of the rent. Section 26 is clear and unequivocal, rent must be paid by the tenant when it is due.

The parties are in agreement that the tenant paid half of the rent for July. The tenant testified during the hearing that the letter he wrote on July 16th clearly indicated there is another \$925.00 owed and that he was going to pay the remainder of the rent for July by 'manual payment'. The tenant had the intent to pay the rent on July 16th but chose not to pay once he left the rental unit.

I am satisfied that the tenant breached section 26 of the Act by failing to pay the rent in full when it was due in accordance with the tenancy agreement. Pursuant to section 7 of the Act, the tenant must compensate the landlord with the remainder of the rent for July. I award the landlord compensation in the amount of **\$925.00** in accordance with section 67 of the Act.

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.

The tenancy ended on July 23, 2019 in accordance with the landlord's 10 Day Notice and the tenant's letter acknowledging it would end on that date. The landlord filed an

Application for Dispute Resolution Proceedings to retain the security deposit within 15 days of the end of the tenancy. The landlord continues to hold the tenant's security deposit in the amount of \$925.00 and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord is entitled to retain the entire security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100.00.

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: November 23, 2019

Residential Tenancy Branch