



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKFAIR ASSETS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

On August 19, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.D. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that he did not know who the Landlord was on this Application as he dealt with the property management company throughout his tenancy. As such, it is his belief that he does not have to respond to these claims. A.D. advised that the property management company has always acted as an agent for the Landlord during the entire tenancy and stated that he had been advised to list the owner as the Landlord on the Application. He had also listed the owner as the Landlord on a previous Dispute Resolution hearing that the Tenant attended (the relevant file number is listed on the first page of this decision).

When reviewing the evidence before me, I find it important to note that the tenancy agreement, the condition inspection report, and the emails submitted by the Tenant as documentary evidence all indicate that the property management company is acting as an agent for the owner. Furthermore, in the previous Dispute Resolution Application, the Applicant is the same name as the Applicant in this file. As the Tenant attended that previous hearing, as there is no evidence that the Tenant took issue with this before or during that hearing, and as the Tenant did not draw my attention to any evidence submitted for this hearing taking issue with this party being named on the Application, I am satisfied on a balance of probabilities that it has been clear from the start of the

tenancy that the property management company has always been acting as an agent for the owner and that the owner is the Landlord. If the Tenant was concerned about this issue, there is no evidence that he made any attempts to find this information out. Furthermore, in the emails the Tenant submitted, he acknowledged that the property manager was acting as an agent for the Landlord. As such, I do not accept the Tenant's position that he was not aware of who the Landlord was or that he does not have to respond to this claim.

A.D. advised that he served the Notice of Hearing and evidence package to the Tenant by registered mail on August 30, 2019 and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing and evidence package.

The Tenant confirmed that he served his evidence in person at the Landlord's office on December 9, 2019 and A.D. confirmed receiving this evidence. Based on the undisputed testimony, as this evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2001 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 30, 2019. Rent was established in the amount of \$3,773.00 per month, due on the first day of each month. A security deposit of \$1,500.00 was also paid but was ordered to be repaid to the Tenant as per the previous Dispute Resolution proceeding. A copy of the signed tenancy agreement was submitted as documentary evidence.

Both parties agreed that a move-in inspection report was conducted on September 10, 2001 and a copy of the signed report was submitted as documentary evidence. As well, they agreed that a move-out inspection report was conducted on April 30, 2019.

A.D. advised that the Landlord was seeking compensation in the amount of **\$398.35** for the cost of drywall repairs due to big holes in the walls that the Tenant left. He stated that these holes were beyond normal wear and tear. He referenced three pictures and an invoice for the work, and these were submitted as documentary evidence to support these claims.

The Tenant advised that he noted on the move-out inspection report that he does not agree with the drywall repairs as the move-in inspection report noted some holes in the walls. He stated that the Landlord's photos show that these holes are not large and as he had lived there for so long without the walls being painted, the walls required re-painting anyways. Furthermore, as he vacated the rental unit on April 30, 2019, he questioned why the invoice for this repair work is dated "April 8, 2018".

A.D. stated that the painting cost is only for the areas affected by the damage the Tenant caused. Furthermore, he stated that the contractor may have put the wrong date on the invoice as he could not get access to the rental unit until the Tenant vacated.

A.D. then made submissions with respect to the Landlord's request for compensation in the amount of **\$196.56** for the cost of repair person's call out fee. However, A.D. decided to withdraw this claim and the Tenant did not take issue with this. As such, this claim is dismissed without leave to reapply.

A.D. advised that the Landlord was seeking compensation in the amount of **\$3,681.00** for the cost of rent arrears for October 2018 and **\$25.00** for the cost of an insufficient funds charge. He stated that the Tenant paid rent through pre-authorized debit and October 2018 rent was not paid as there were insufficient funds in his account. He submitted that he attempted to contact the Tenant but was unsuccessful and eventually

had email communication where the Tenant promised to pay the rent; however, he never did. As well, he stated that the tenancy agreement indicated that the insufficient funds fee can be charged back to the Tenant.

The Tenant referenced his emails that were submitted as documentary evidence and stated that he advised the Landlord that he had lost his access codes to his bank account and that he had to wait for his new codes to arrive. As a result, there would not be sufficient funds in his account, and he advised the Landlord not to debit his account for October 2018 rent until a week after rent was due. As the Landlord attempted to obtain the rent anyways, it is his belief that he should not be responsible for the insufficient funds charge. He stated that he did not make any other attempts to pay rent on October 1, 2018, pursuant to his tenancy agreement. As well, he acknowledged that October 2018 rent is still unpaid.

A.D. advised that the Landlord was seeking compensation in the amount of **\$3,773.00** for the cost of rent arrears for March 2019 and **\$25.00** for the cost of an insufficient funds charge. As well, the Landlord was also seeking compensation in the amount of **\$3,773.00** for the cost of rent arrears for April 2019 and **\$25.00** for the cost of an insufficient funds charge. He stated that the Landlord attempted to debit the rent on the day rent was due in March and April 2019 but there were insufficient funds in the account. To date, these amounts remain unpaid as well.

The Tenant referenced his notice to end his tenancy dated March 28, 2019 where he indicated that he was ending the tenancy due to a material breach of the tenancy agreement. It was his belief that as he ended the tenancy due to a material breach, he was entitled to withhold the rent. However, when he was asked what Sections of the *Act* permitted him to withhold the rent due to a material breach of the tenancy, he stated that he was not sure as he was not familiar with the *Act*. He confirmed that the reason that he withheld rent is that he was dissatisfied with repairs that he felt were not addressed by the Landlord and that as a result, he arbitrarily decided that he would not pay the rent. As well, he stated that he should not be responsible for the insufficient funds charges as the Landlord did not respond to his messages advising them not to attempt to debit the rent owed.

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.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for repair of the drywall, I note that there are holes in the walls that needed repair due to fixtures being mounted to the walls. As the Tenant acknowledged mounting these fixtures, I do not accept that the holes noted on the move-in inspection report were the same holes that were referred to in this Application. However, based on the three pictures submitted by the Landlord, I do not find that this evidence supports the amount charged on the invoice to fix these holes. As the repair of these holes does not appear to require significant time or effort, and as the walls likely were in need of painting anyways as they had not been done during the tenancy, I am satisfied that the Landlord has only substantiated a claim in the amount of **\$100.00**.

Regarding the Landlord's claim for rent arrears for October 2018 rent and the subsequent insufficient funds charge, as per Section 26 of the *Act* and the tenancy agreement, rent is due on the first day of each month. This means that the Tenant is responsible for paying the rent on the first day of each month unless the Tenant has written consent from the Landlord not to pay the rent when due. During the hearing, the Tenant was advised of the other following circumstances that would allow him to withhold the rent:

1. The Tenant has an Arbitrator's decision allowing the deduction;
2. The Landlord illegally increases the rent;

3. The Landlord has overcharged for a security or pet damage deposit;
4. The Landlord refuses the Tenant's written request for reimbursement of emergency repairs;
5. The Tenant has the Landlord's written permission allowing a rent reduction; or
6. The Tenant has made overpayments of rent in the past.

For each point, the Tenant was asked if this circumstance pertained to his situation and he answered in the negative for each point. Furthermore, I find it important note that the Tenant does not have the authority to advise the Landlord when rent can be expected. As rent was due on October 1, 2018 and as the Tenant made no attempts to pay the rent on October 1, 2018 in any other manner, I am satisfied that the Landlord's attempts to debit the rent owing on the day it was owed was justified. As such, I find that the Landlord should be granted a monetary award in the amount of **\$3,706.00** to satisfy these claims.

Regarding the Landlord's claim for rent arrears for March and April 2019 rent and the subsequent insufficient funds charges, I find it important to note that the Tenant's claim of a material breach was included in his letter to the Landlord dated March 28, 2019. However, if it was his belief that he was entitled to withhold his rent due to a material breach, it is not clear to me then why he withheld March 2019 rent prior to issuing the letter to the Landlord. I find that this causes me to doubt the credibility of the Tenant's testimony on the whole, and supports the finding that the Tenant, more likely than not, withheld the rent illegally, by his own choice, when he was not permitted to do so.

As the undisputed evidence is that the Tenant did not meet any of the criteria under the *Act* that would allow him to withhold the rent, and as there is no such provision in the *Act* that allows the Tenant to withhold the rent due to an alleged material breach of the tenancy, I am satisfied that the Tenant made his own decision to arbitrarily withhold the rent when he was not entitled or permitted to do so under the *Act*.

Furthermore, as the tenancy agreement indicates that a fee can be charged back for insufficient funds, I am satisfied that the Tenant is also responsible for these costs as well. As such, I find that the Landlord should be granted a monetary award in the amount of **\$7,596.00** to satisfy these claims.

As the Landlord was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

| | |
|---|--------------------|
| Costs associated with drywall repair | \$100.00 |
| Rent arrears for October 2018 | \$3,681.00 |
| Rent arrears for March 2019 | \$3,773.00 |
| Rent arrears for April 2019 | \$3,773.00 |
| Insufficient funds charges for October 2018, March 2019, and April 2019 | \$75.00 |
| Filing fee | \$100.00 |
| TOTAL MONETARY AWARD | \$11,502.00 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$11,502.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: December 30, 2019

Residential Tenancy Branch