



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant CS" did not attend this hearing, which lasted approximately 49 minutes. The landlord and tenant JS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the owner of the rental unit. The tenant confirmed that he had permission to represent tenant CS, who is his son, as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were both duly served with the landlord's application and notice of hearing.

The tenant stated that he did not receive the landlord's evidence package, except he had the text messages from tenant CS. The landlord's evidence package included a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 3, 2019 ("10 Day Notice"), the proof of service for the 10 Day Notice, and character profiles for the landlord and tenant CS. The tenant said that he did not receive these documents from the landlord. I do not find it necessary to record findings of service regarding the landlord's evidence, as I was not required to consider the 10 Day Notice and the character profiles were not relevant to the landlord's application.

The tenant said that tenant CS uploaded video evidence to the RTB website and served it to the landlord. The landlord denied receipt of any evidence from the tenant. I notified both parties that I did not receive any evidence from the tenants. The tenant was unable to provide a date of service for the RTB or the landlord. Therefore, I notified the tenant that I could not consider any evidence from the tenants because he was unable to provide service details and the landlord and I did not receive the evidence.

At the outset of the hearing, both parties confirmed that the tenants vacated the rental unit. The landlord confirmed that she did not require an order of possession. Accordingly, the landlord's application for an order of possession is dismissed without leave to reapply.

Preliminary Issue – Jurisdiction to hear Application

Section 4(e) of the *Act* states that the *Act* does not apply to living accommodation occupied as vacation or travel accommodation. I raised the issue of jurisdiction at the hearing, as the landlord submitted a copy of a document entitled "vacation rental agreement," that was signed by both parties.

The landlord stated that the RTB has jurisdiction to hear her application. She said that there was a previous RTB hearing in January 2020 between the parties, where another Arbitrator determined that this was a residential tenancy, not living accommodation occupied as vacation or travel accommodation. The file number for that hearing appears on the front page of this decision. The landlord stated that she agreed with that decision and even though the tenancy agreement signed by both parties was called a "vacation rental agreement," it was in fact, a residential tenancy.

The tenant agreed that a previous RTB hearing occurred for this tenancy. He said that he did not attend the hearing, but tenant CS did. He stated that he did not know whether the RTB has jurisdiction to hear the landlord's application. He claimed that he was confused because the landlord issued a residential 10 Day Notice, but the tenants signed a vacation rental agreement. He said that the tenants did not occupy the rental unit for vacation or travel accommodation. He claimed that although he only lived at the rental unit for about four months and it was a short term, he was working at the time, not vacationing or traveling.

I notified both parties that I had jurisdiction to hear this matter at the RTB, as I find it is a residential tenancy under the *Act*. Both parties agreed that the rental unit was not living accommodation occupied as vacation or travel accommodation. A previous RTB

decision was made in this matter that had the same findings. The tenants filed that previous application at the RTB. Further, titling a document as a “vacation rental agreement” is in name only; it does not determine whether the rental unit is vacation or travel accommodation. That is determined by the documentary evidence and testimony of both parties.

Preliminary Issue - Amendment to Landlord’s Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to increase the landlord’s monetary claim to include January 2020 rent of \$1,100.00. The landlord filed an amendment to her application. The tenants did not object to same.

The tenants are aware that rent is due on the first day of each month. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord’s claim for increased rent.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 24, 2019. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord stated that the tenancy ended on January 24, 2020. The tenant did not know when the tenancy ended, claiming it was after Christmas 2019.

The landlord said that the tenants paid a security deposit of \$550.00, as per the parties' written tenancy agreement, which she continues to retain. The tenant stated that a security deposit of \$850.00 was paid because \$1,950.00 was paid at the beginning of the tenancy and rent was only \$1,100.00. He said that he thought tenancy CS submitted a copy of proof of this deposit. The landlord disputed that the tenants paid \$850.00 for a security deposit, claiming that she received \$1,950.00 but \$550.00 was for a security deposit, \$1,100.00 was for September 2019 rent, and \$300.00 was for prorated August 2019 rent, all of which was written in the tenancy agreement. The tenant said that he did not recall this, and it did not make sense for \$300.00 to be for a week of prorated rent because that would make rent \$1,200.00 per month, not \$1,100.00.

The landlord seeks a monetary order of \$2,200.00 plus the \$100.00 application filing fee. The landlord seeks rent of \$1,100.00 for each month of December 2019 and January 2020, totaling \$2,200.00. She said that the tenants were living in the rental unit during the above months and failed to pay the rent.

The tenant agreed that the tenants did not pay rent for December 2019 and January 2020, totaling \$2,200.00. He said that he tried to pay cash rent, but the landlord refused it. He stated that the tenants should not have to pay the full rent for both months because there was a bad ant infestation in the rental unit and the landlord refused to deal with it. He also claimed that the landlord and her husband verbally attacked the tenants, made vulgar comments, and called the tenants bad names.

Analysis

Section 26 of the *Act* requires the tenants to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenants failed to pay rent of \$1,100.00 for each month of December 2019 and January 2020, totaling \$2,200.00, to the landlord. This rent was indicated in the written tenancy agreement, which was signed by both parties. Both parties agreed that the tenants failed to pay this rent.

The tenants are only entitled to reduce rent for emergency repairs paid as per section 33 of the *Act* or an order from an Arbitrator. Neither occurred in this case. An alleged

ant infestation and alleged verbal attacks from the landlord do not meet the above criteria. Accordingly, I find that the landlord is entitled to rental arrears of \$2,200.00 total, from the tenants.

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenants.

I find that the landlord continues to retain the tenants' security deposit of \$550.00. I find that the tenants failed to provide documentary proof that \$850.00 was paid for the deposit. The landlord provided the written tenancy agreement, which was signed by both parties, indicating that the first payment by the tenants for \$1,950.00 was for a security deposit of \$550.00 and prorated August 2019 rent of \$300.00 and September 2019 rent of \$1,100.00.

Although the landlord did not apply to retain the tenants' security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$550.00, in partial satisfaction of the monetary award.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$550.00.

I issue a monetary order in the landlord's favour in the amount of \$1,750.00 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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.

The landlord's application for an order of possession is dismissed without leave to reapply.

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: March 03, 2020

Residential Tenancy Branch