



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL
CNR, OLC**

Introduction

This hearing dealt with applications by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlord applied for:

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

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities pursuant to section 47; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

Preliminary Issue – severing of issues

Rules 6.1, 6.2 and 2.3 pertain to the hearing of a dispute resolution proceeding, reproduced below.

6.1 Arbitrator’s role

The arbitrator will conduct the dispute resolution process in accordance with the *Act*, the Rules of Procedure and principles of fairness.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy

or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

At the commencement of the hearing, I determined that the tenant's application to cancel the 10 day notice and the landlord's application for a monetary order for unpaid rent were sufficiently related and would be heard together at this dispute resolution hearing. The tenant's application seeking an order that the landlord comply with the *Act*, regulations or tenancy agreement was dismissed with leave to reapply.

Preliminary Issue – evidence accepted after the commencement of the hearing

During the hearing, the tenant gave affirmed testimony that she continues to live in the rental unit. The landlord gave affirmed testimony that the unit was abandoned some time around February 20, 2020 and that the unit has been vacant ever since. The landlord testified he had video evidence and photographs taken on February 25, 2020 to corroborate his version of the facts. As both sets of facts are equally plausible, I agreed to allow the landlord the opportunity to provide video and photographic evidence to support his claim that the tenant no longer occupies the rental unit pursuant to Rule 3.19. The landlord was given until midnight the day of the hearing (March 3, 2020) to provide that evidence to me.

Preliminary Matters – settlement

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Was the rental unit abandoned?

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

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 are addressed in this decision.

The rental unit is an upper unit in a house containing both an upper and lower unit.

A copy of the tenancy agreement was supplied by both the landlord and the tenant. The month to month tenancy began on April 1, 2019 with rent set at \$1,450.00 per month, payable on the first day of the month. The landlord testified that the utility bills were split between the 2 units, with the upper unit responsible for paying 55% of the utility bills. This arrangement was not recorded on the tenancy agreement but was verbally agreed to by the tenant. At the commencement of the tenancy, a security deposit of \$725.00 was taken.

The landlord further testified that from the beginning of the tenancy, the tenant always paid her rent up until the end of December. Some of the utilities were paid, but by the end of December, there remained \$203.67 in unpaid utilities. The landlord referred me to the balance sheet for rent and utilities for 2019 and 2020 as evidence. The landlord also referred me to the paperwork from his bank indicating he received the December rent and utility payment from the tenant.

The tenant did not pay rent for January that was due on January 1st. On January 2, 2020, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent or utilities by personal service. The effective date on the notice was January 13, 2020. The tenant acknowledges receiving the notice on January 2nd. The landlord testifies the tenant has not paid rent for January, February or March 2020. The landlord has also provided demand letters seeking payment of utility bills dated January 7, 2020, and January 27, 2020. The tenant has stopped communicating with him.

The landlord testified that he was informed by the tenant living in the lower unit of the house that the tenant in these proceedings vacated the rental unit sometime around February 20, 2020. On February 24, 2020, the landlord posted a notice to the tenant's door seeking to inspect the rental unit between 5:00 p.m. and 7:00 p.m. the following day. On February 25, 2020 at 6:36 p.m., the landlord entered the rental unit and discovered it was empty of the tenant's belongings except for garbage and debris left behind. Pursuant to my order, the landlord provided video evidence of his inspection together with photographs taken on February 25, 2020. The landlord testified the locks were changed on February 25, 2020.

The tenant provided the following testimony. She did not have any of the evidence she provided for the hearing before her as she only had a cell phone which was being used to participate in the conference call. She testified that she paid rent for the month of January and said there was proof submitted that she did. The tenant was unable to advise the amount she said was paid for the month of January and could not recall the name of the bank, although it was paid by e-transfer. She is 'not entirely sure' the day it was paid, but thinks it was within the last 10 days of December. When asked about the proof of payment she submitted as evidence, the tenant remembers it, but doesn't have it before her to present for the hearing. The tenant testifies she paid rent for February and March as well, but didn't provide proof of payment since she didn't think it was part of the proceedings for today.

The tenant testified that she is still living in the rental unit and denies the landlord has changed the locks. She is 'not sure where the landlord is coming from', since she wouldn't have participated in the hearing if she had abandoned the rental unit.

Analysis

I have reviewed the video and photographic evidence of the inspection made by the landlord on February 25, 2020. Each room has been emptied of clothing, personal belongings and bedding and it is clear to me that the only items left behind were garbage and debris. Based on this evidence, I am satisfied the tenant has vacated the rental unit in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 25, 2020. As the effective date of the Notice was January 13, 2020, I find the tenant to be an overholding tenant, defined under section 57 as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

I issue the landlord an order of possession effective 2 days after service upon the tenant. As the landlord has testified that the tenant no longer communicates with him, the landlord is at liberty to serve the tenant with the order of possession by posting to the door of the rental unit. Such service be deemed good and sufficient service upon the tenant pursuant to section 71 of the *Act*.

Landlord's claim for unpaid rent or utilities

Residential Tenancy Branch Rules of Procedure Rules 3.7, 7.4 and 7.17 state as follow:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible... To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

7.17 Presentation of evidence at the hearing

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.

Although the tenant submitted documentary evidence for the hearing, she did not present any of it and acknowledged she didn't have copies of the documents with her or available electronically during the hearing. She was unable to provide details about the evidence she submitted with respect to her payment of January rent. She couldn't recall the date it was paid, the exact amount or the bank from which the funds were taken. As the tenant did not present her documentary evidence, I have not considered

it for my decision pursuant to rules 7.4 and 7.17 of the Residential Tenancy Branch Rules of Procedure.

The landlord provided a detailed spreadsheet indicating how much rent and utilities were due for each month and when each payment was made. I find the landlord's testimony to be genuine and forthright as he acknowledged the tenant faithfully paid rent up until the end of December and provided sufficient proof of the tenant paying.

The tenant testified that she paid rent for January, February and March. The weight I give to the tenant's testimony is tempered by the fact that she affirmed that she continues to live in the rental unit when the evidence clearly showed she vacated it sometime before February 25th. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities. I find that the landlord's version of the facts to be truthful and that on a balance of probabilities the tenant has not paid rent for the month of January, 2020. I find the landlord is entitled to compensation of \$1,450.00 for unpaid rent pursuant to section 67 of the *Act*.

As stated earlier, the tenant is an overholding tenant who vacated the rental unit on February 25, 2020. In accordance with section 57(3) which states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended, I award the landlord \$1,250.00 rent for 25 days in February. ($\$1,450.00 / 29 \text{ days in February} \times 25 \text{ days} = \$1,250.00$). The tenant is not responsible for paying rent for the month of March since the tenancy ended in February.

The landlord seeks utilities from December and January. Although the tenant has made payments towards utilities, I find neither the tenancy agreement nor the addendum provide proof of any agreement, signed and dated by both parties, as to the percentage of utilities that the tenant would be paying. Further, the landlord's demand letters do not include copies of the utility bills in order for the tenant to verify the amount she is being required to pay. For these reasons, I dismiss the landlord's application to be compensated for utilities.

As the landlord's application was successful, the landlord is entitled to recover the filing fee paid.

The landlord continues to hold the tenant's security deposit in the amount of \$750.00. In accordance with section 72, the landlord may retain the full security deposit in partial satisfaction of the monetary order.

Item	Amount
January 2020 rent	\$1,450.00
Pro-rated February 2020 rent	\$1,250.00
Filing fee	\$100.00
Less security deposit	(\$750.00)
Total	\$2,050.00

Conclusion

I issue the landlord an order of possession effective 2 days after service upon the tenant. The landlord is at liberty to serve the tenant with the order of possession by posting to the door of the rental unit. Such service be deemed good and sufficient service upon the tenant pursuant to section 71 of the *Act*.

I issue a monetary order in the landlord's favour in the amount of **\$2,050.00**. 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: March 04, 2020

Residential Tenancy Branch