



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 27, 2020 seeking an order to recover money for unpaid rent and utilities, and the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on May 15, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Application names two individuals as tenants. On my review of the documents, I find there is no reference to one of the parties in the original tenancy agreement. As such, I amend the landlord’s application to exclude the second individual named as a tenant and make reference to ‘tenant’ as referring to the individual who signed the tenancy agreement.

The landlord attended the telephone conference call hearing; the tenant did not attend.

In the hearing the landlord stated that they gave the notice of this dispute resolution proceeding and evidence to the tenant directly at their current address. The landlord delivered this by hand on February 28, 2020 with a witness present.

I accept the landlord’s undisputed evidence that the package was handed to the tenant directly. Based on the submissions of the landlord, I accept the landlord served the tenant with the notice of this hearing and the landlord’s evidence in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant’s absence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only those which are relevant to the issues and findings in this matter are described in this section.

The landlord and the tenant signed the tenancy agreement on April 9, 2019. The tenancy started on May 1, 2019, and the fixed term ended on October 31, 2019. Rent was in the amount of \$1,750.00 payable on the first day of each month. The tenant was responsible for paying 50% of utilities for hydro and gas each month. The tenant paid a security deposit amount of \$875.00 to the landlord on April 9, 2019.

On October 8, 2019 the landlord and tenant – along with an occupant -- completed a 'Mutual Agreement to End Tenancy' document. This stated the tenant would vacate on December 31, 2019. After this, the rental payment cheque for December 2019 was not processed by the bank because of insufficient funds.

The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on June 12, 2019. They issued that notice for the unpaid amount of \$750.00 that was payable on June 1, 2019. The landlord stated that the tenant did not move out when they received this initial 10 Day Notice. The landlord continued to wait and allowed tenant to complete payments in a more random fashion. They felt they were helping the tenant with their rent payments for each of these successive months.

The landlord stated that the tenant vacated the rental unit on January 15, 2020. The tenants gave two cheques in the occupant's name for the January 2020 payment that was similarly not processed by the bank. Upon receiving notice of this dispute resolution proceeding on February 28, 2020, the tenant told the landlord they would pay. After this, the landlord called them two times directly, though they did not answer the calls.

The landlord submitted images of two cheques and screenshots of their bank account activity that shows the bank did not accept funds from those cheques. A cheque numbered 33 was dated January 23, 2020 in the amount of \$500.00; this was returned on January 31, 2020. A cheque numbered 34 was dated February 10, 2020 in the amount of \$1,300.00; this was returned from the bank on April 1, 2020. Together these two amounts equal the amount of \$1,800.00 that the landlord is claiming as unpaid rent.

The landlord applied for a monetary order for \$1,800.00 that represents unpaid rent for the month of December 2019. The landlord applies for an order authorizing the application of the security deposit to the monetary claim.

Analysis

Although the landlord issued a 10 Day Notice in June 2019, I find the tenancy continued past the period in which the tenant could apply to cancel that notice. I find an implied agreement was ongoing because the landlord continued to accept rent from the tenant, with no indication the rent payments were for 'use and occupancy only'. Later, the tenant and landlord signed a mutual agreement to end tenancy with the tenancy end date of December 31, 2019. This is further proof that a tenancy continued through to the end of 2019. The tenant maintained occupancy of the unit through to January 15, 2020. In the Application, the landlord asked for "the remaining rent of December 2019 and January 2020".

I accept the landlord's undisputed evidence that the tenant did not pay the rent owed in full by the agreed date of December 1, 2019. The tenant's payments were not able to be processed due to insufficient funds.

Section 26 of the *Act* outlines a tenant's duty to pay rent:

- (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.

The landlord stated that they tried to give the tenant the opportunity to pay the amount of rent owing. The cheques procured for this purpose were not processed by the bank due to insufficient funds.

The landlord provided evidence on the monetary order worksheet. The two cheque images provided correspond to the account activity provided by the landlord. The tenants did not attend

the hearing; therefore, there is no evidence to the contrary on this exact amount. The amount incorporates \$50.00 for utilities owing; similarly, there is no evidence to the contrary on this amount.

I find the landlord is entitled to an award for the amount claimed: \$1,800.00. This amount includes the claim for the first two weeks of January 2020.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,800.00. After setting off the security deposit, there is a balance of \$925.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$925.00 as compensation for the December 2019 and January 2020 rent amounts.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,025.00 for unpaid rent and a recovery of the filing fee for this hearing application.

The landlord is provided with this Order 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 *Act*.

Dated: May 28, 2020

Residential Tenancy Branch