



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 02, 2019 (the "Application"). The Landlord applied to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were sent by registered mail to the Tenant's forwarding address on December 06, 2019. The Landlord had submitted the customer receipt for the package with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for by J.C. on December 09, 2019. The Landlord testified that she understood the Tenant's forwarding address to be the Tenant's mother's address. The Landlord testified that J.C. is the Tenant's mother.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). I am satisfied based on the same evidence that the Landlord complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service. Based on the Canada Post website information, I am satisfied the Tenant received the package December 09, 2019.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought to recover unpaid rent for the period of October to November and November to December.

A written tenancy agreement was submitted as evidence. The tenancy started May 13, 2016 and was a month-to-month tenancy. Rent was originally \$860.00 due on the 15th day of each month. The Tenant paid a \$400.00 security deposit. The agreement was signed by the Tenant but not the Landlord. The Landlord confirmed the tenancy agreement is accurate.

The Landlord testified that rent was increased to \$880.00 per month as of February 15, 2019. The Landlord submitted a Notice of Rent Increase showing this.

The Landlord submitted a prior RTB decision in relation to the parties issued on File Number 1. This was issued through a direct request proceeding. The Landlord's request for a Monetary Order for unpaid rent was dismissed with leave to re-apply. The Landlord was issued an Order of Possession and a Monetary Order for the \$100.00 filing fee on November 05, 2019.

The Landlord testified that she served the Order of Possession on the Tenant and waited for the Tenant to vacate. The Landlord testified that it took her a few weeks to get the Tenant to vacate and that the Tenant did vacate November 30, 2019. The Landlord testified that the Tenant provided her forwarding address November 30, 2019.

The Landlord testified that she did have an outstanding Monetary Order at the end of the tenancy and pointed to the Monetary Order issued on File Number 1 for the \$100.00 filing fee. The Landlord sought to keep \$100.00 of the security deposit towards the

outstanding Monetary Order. The Landlord testified that she served the Monetary Order on the Tenant and the Tenant did not pay it.

The Landlord testified that both parties did a move-in inspection.

The Landlord testified that the parties did not do a move-out inspection and did not discuss doing a move-out inspection.

The Landlord testified as follows in relation to unpaid rent. The Tenant owed \$880.00 per month for October and November on the 15th day of each month. The October payment was for the October to November period and the November payment was for the November to December period. The Tenant did not pay any rent for these periods. The Tenant did not have authority under the *Act* to withhold rent.

The Landlord submitted that she is entitled to recover unpaid rent for the first part of December when the Tenant had vacated. The Landlord submitted as follows. She could not re-rent the unit while the Tenant was still there. She had to clean the unit and do some repairs once the Tenant vacated. The unit was listed for rent on Facebook in December. She does not know when in December the unit was listed for rent. The unit was not re-rented until January.

Analysis

Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant participated in the move-in inspection and therefore did not extinguish her rights in relation to the security deposit under section 24 of the *Act*.

I am not satisfied based on the evidence provided that the Tenant was offered two opportunities to do a move-out inspection and therefore I find the Tenant did not extinguish her rights in relation to the security deposit under section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished her right to claim against the security deposit under sections 24 or 36 of the *Act* because extinguishment only relates to claims for damage and the Landlord has claimed for unpaid rent.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant vacated the rental unit November 30, 2019 and provided her forwarding address November 30, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of November 30, 2019, the date the tenancy ended and the date she received the Tenant's forwarding address. The Application was filed December 02, 2019, within the 15-day time limit. Therefore, the Landlord complied with section 38(1) of the *Act*.

Unpaid rent

Section 7 of the *Act* states that, if a tenant does not comply with the *Act*, regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for loss that results.

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I am satisfied based on the undisputed testimony of the Landlord, written tenancy agreement and Notice of Rent Increase that the Tenant was required to pay \$880.00 in

rent on October 15th for the October to November period and \$880.00 in rent on November 15th for the November to December period.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not pay rent for the October to November period or November to December period. I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not have authority under the *Act* to withhold rent for these periods. I have no evidence before me that the Tenant did.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant vacated the rental unit November 30, 2019. The Tenant owed rent under the tenancy agreement while she resided in the rental unit. I am satisfied the Landlord is entitled to recover rent for the period from October 15, 2019 to November 30, 2019.

I am also satisfied the Landlord is entitled to recover rent up until December 15, 2019 for the following reasons.

Rent for the November to December period was due November 15, 2019. The Tenant was living in the rental unit November 15, 2019. The Tenant was required to pay rent in the amount of \$880.00 on November 15, 2019.

I acknowledge that the Tenant vacated the rental unit November 30, 2019. However, the Landlord was issued an Order of Possession effective two days after service on the Tenant on November 05, 2019 on File Number 1. During the hearing, the Landlord testified that she served this Order on the Tenant and that it took a few weeks for the Tenant to vacate. The Tenant should have vacated two days after being served the Order. I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not do so. In these circumstances, I am satisfied the Landlord could not list the unit for rent while the Tenant was still residing in the rental unit contrary to the Order of Possession. I am satisfied based on the undisputed testimony of the Landlord that she lost December rent because of this. I am satisfied based on the undisputed testimony of the Landlord that she listed the unit for rent in December and rented it for January. I am satisfied the Landlord is entitled to recover the full rent amount for the November to December period in the circumstances.

The Landlord is therefore entitled to recover \$1,760.00 in rent for October to December of 2019.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,860.00 in compensation. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$400.00 security deposit. I decline to allow the Landlord to keep \$100.00 of the security deposit towards the outstanding Monetary Order on File Number 1 given this Order has already been served on the Tenant and given the entire security deposit can be retained for the compensation owed on this file. In the circumstances, the Monetary Order on File Number 1 remains outstanding. The Landlord is owed \$1,860.00 on this file. The Landlord can keep the \$400.00 security deposit towards this. The Landlord is issued a further Monetary Order in the amount of \$1,460.00 for the remaining monies owing on this file pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$1,860.00. The Landlord can keep the \$400.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$1,460.00. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 04, 2020

Residential Tenancy Branch