



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

Both Tenants and their Advocate (the "Tenants"), and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Both parties confirmed that they had received each other's documentary evidence packages.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit?
- Is the Landlord entitled to retain the security deposit and pet damage deposit for this tenancy?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord and Tenant agreed that this tenancy started on November 1, 2019, as a one-year fixed term tenancy. That rent in the amount of \$3,000.00 was to be paid by the first day of each month and that the Tenant had paid a \$1,500.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties also agreed that this tenancy ended on April 17, 2020, when the Tenants moved out of the rental unit.

The Landlord testified that the rent for February and March 2020 had not been paid by the Tenants. The Landlord testified that they had waved the January 2020 rent due to issues with the electricity in the rental unit, and to cover the Tenants' expenses during the repair of those issues, but that the Tenants' rent cheque for February 2020 had come back NSF and that the rent for March 2020 had not been paid. The Landlord requested the recovery of the unpaid rent for February and March 2020, in the amount of \$6,000.00 and the NSF fee of 7.50 that they had been charged by their bank for the Tenants' NSF cheque. The Landlord submitted a copy of the NSF rent cheque for February 2020 and a copy of the uncashed cheque for March 2020 into documentary evidence.

This Arbitrator asked the Landlord why the Landlord's verbal testimony, regarding which months were outstanding in rent, were different from the Landlords written application for these proceedings, as the Landlord had applied to recover unpaid rent for January, March and April 2020, not February 2020. The Landlord responded that there had been an error on their application and confirmed, twice, that they were seeking the recovery of unpaid rent for February and March 2020.

The Landlord also confirmed that the prorated rent for April 2020, of \$1,700.00, had been paid on April 19, 2020, and was not outstanding as of the date of this hearing. This Arbitrator inquired as to why the Landlord had included a claim for unpaid rent for April 2020, in their application dated May 6, 2020, when that rent had been paid 18 days before the Landlord filed for this hearing. The Landlord testified that it was an error.

The Tenants testified that they agreed that their rent cheque for February had not cleared their account but that they had paid the February 2020 rent in full, by cash, as of February 4, 2020. The Tenants submitted a copy of a rent receipt for February 2020 rent into documentary evidence.

The Tenants testified that they had also paid the rent for March 2020, on February 15, 2020, by cash to their Landlord's friend. The Tenants testified that the Landlord had advised them that they were out of the country and to give the rent money to their friend while they were away. The Tenants testified that the Landlord's friend did not provide them with a receipt, for the cash rent payment, as the Landlord was to provide them with one when they got back into town, but that as of the date of this hearing the Landlord was refusing to provide them with the receipt for that payment. The Tenants submitted a copy of the message they received from the Landlord advising them to pay the cash rent payment to the Landlord's friend into documentary evidence.

This Arbitrator asked the Landlord if they had received the rent payment for February 2020 and issued the rent receipt that the Tenants submitted into documentary evidence. The Landlord responded that they had received those funds but that they were not asking for the February rent that they were requesting the unpaid January 2020, rent.

This Arbitrator questioned the Landlord as to their change in testimony regarding which months they were claiming for in these proceedings and to their previous testimony that the January 2020 rent had been waived.

The Landlord responded that they were not changing their testimony, that they had always been requesting the unpaid rent for January and March 2020. This Arbitrator inquired further as to the Landlord's testimony regarding the waved rent, The Landlord responded that they had waved the December 2019 rent, not the January 2020 rent.

The Landlord testified that the Tenants' rent cheque for January 2020 had also come back NSF and that the rent for March 2020 had not been paid at all. The Landlord requested the recovery of the unpaid rent for January and March 2020, in the amount of \$6,000.00 and two NSF fees of 7.50 each, for January and February 2020, that they had been charged by their bank. The Landlord submitted a copy of the NSF rent cheques for January and February 2020 and a copy of the uncashed cheque for March 2020, rent into documentary evidence.

The Landlord also testified that there was no proof that the Tenant's had paid a cash rent payment for their March 2020, rent to the Landlord's friend.

The Tenants testified that they agreed that their rent cheque for January 2020, had also not cleared their bank account but that they had paid the January 2020 rent in full, via two e-transfers sent to the Landlord on January 17, 2020. The Tenants submitted copies of two e-transfer receipts dated January 17, 2020, into documentary evidence.

This Arbitrator asked the Landlord if they had received the e-transfer rent payments on January 17, 2020, the Landlord testified that they had received these funds. This Arbitrator then asked the Landlord why they were claiming for unpaid rent in January 2020 if they had been paid the rent on January 17, 2020. The Landlord testified that the two e-transfer they received on January 17, 2020, was for the outstanding rent for December 2019.

This Arbitrator inquired further as to the Landlord's previous testimony regarding the waved rent for December 2019, the Landlord responded that they had not testified that they waved the December 2019 rent, but that they had waved the November 2019 rent.

When this Arbitrator further challenged the Landlord regarding the number of times that they had changed their testimony during this proceeding, asking for clarification regarding what rent had and had not been paid for this tenancy, for what months the Landlord is claiming for in unpaid rent, and for which month the Landlord had waved the rent, the Landlord became upset with this Arbitrator and aggressive in their testimony.

This Arbitrator cautioned the Landlord regarding outburst and inappropriate behaviour during my proceedings and advised the Landlord that they could be muted from the conference call or removed entirely from these proceedings if their inappropriate behaviour continued.

The Landlord changed their testimony again, stating, "If the January and February rents have been paid, then I am claiming for the December rent." "There is no proof that the March rent was paid in cash" and "I want the Tenants to tell me where my money is."

When asked again to clarify what rent was outstanding for this tenancy, the Landlord testified that the November rent was waved and that funds they received in January were for the December 2019 rent, that the funds they received in February were for the January 2020 rent and that the Tenants owed them two months rent for February and March 2020.

The Tenants testified that they paid their rent in full for November 2019 and that the rent for December 2019 had been waved by mutual agreement due repair to issues with the rental unit at the beginning of this tenancy. The Tenants continued in their testimony stating that they paid the January 2020, rent on January 17, 2020, that they paid the February 2020, rent on February 4, 2020, that they paid the March 2020, rent early on February 15, 2020, as the Landlord had requested, and that the prorated rent for April 2020, was paid on April 19, 2020. The Tenants testified that there is no outstanding rent due for this tenancy.

The Landlord testified that they are due two months rent, and again demanded to know where their money was.

The Landlord testified that they are also claiming for a \$435.93 hydro bill had remained unpaid at the end of this tenancy. The Landlord submitted a copy of the hydro bill into documentary evidence.

The Tenants agreed that they had not paid the hydro bill and that they do owe this money to the Landlord.

The Tenants testified that the Landlord is holding their postdated cheques for rent for this tenancy. The Tenants requested that the Landlord return their posted dated cheques.

The Landlord testified that they did not have the Tenants' forwarding address to return the requested post-dated cheques.

The Tenants testified that their forwarding address had been provided to the Landlord during their previous hearing. The Tenants' agreed to provide the forwarding address to the Landlord again during these proceedings.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

Throughout these proceedings, I find that the Landlord repeatedly changed their testimony and made verbal amendments to their claim. Specifically, the Landlord provided conflicting testimony regarding what rent payments had been made and for what months, repeatedly changed what months rent they were claiming for in unpaid rent, and which month's rent had been waved during this tenancy.

Also, I find that it was dubious of the Landlord to file a claim for unpaid rent for April 2020 when they knew that they had received that payment in full just 18 days prior to filing their application for these proceedings.

For the reasons stated above, I find that I am in doubt of the credibility of the Landlord's testimony on the whole and that this doubt has led me to question the validity of the Landlord's claims regarding unpaid rent for this tenancy.

During these proceedings, the Tenants offered clear and concise testimony regarding the payment of their rent for January, February, March and April 2020.

However, I find that the Landlord amended their claim and changed their testimony whenever they were presented with evidence that refuted their claim in this proceeding. I find it disturbing that an applicant would repeatedly change their testimony and amended their claims to suit the testimony and evidence provided by the respondents during a hearing.

Overall, I find it difficult to reconcile the inconsistent, contradictory, and dubious nature of the Landlord's claims and testimony, which has caused me to doubt their credibility on the whole. When I combine the inconsistent, and contradictory testimony provided by the Landlord during these proceedings, with the documentary evidence that I have before me, I find that, on a balance of probabilities, the Landlord has not provided sufficient or compelling evidence to persuade me that there is any amount of rent outstanding for this tenancy. Based on the pattern of behaviour and actions of the Landlord during these proceedings, I find it more likely than not that the rent has been paid in full for this tenancy.

Due to this, I accept the testimony and documentary evidence provided by the Tenants, during these proceedings, to be the creditable account of the payment of rent for this tenancy. Ultimately, I find that there is no outstanding rent due for this tenancy, and I dismiss the Landlord's claim for unpaid rent in its entirety.

As for the Landlord claim for an unpaid hydro bill and the recovery of their bank charges for the Tenants' NSF cheques, I accept the Tenants' testimony, that they agreed there is an outstanding hydro bill in the amount of \$435.93, and that they had two rent cheques returned NSF during this tenancy. Accordingly, I award the Landlord \$450.93, consisting of; \$435.93, for the unpaid hydro bill, and \$15.00 for the recovery of two NSF bank charges. I grant permission for the Landlord to retain \$450.93 of the security deposit they are holding for this tenancy, in full satisfaction of this award.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. Due to the inconsistent, contradictory, and dubious nature of the Landlord's claims made during this proceeding, I decline to award the Landlord the recovery of the filing fee paid for this application.

I order the Landlord to return the remainder of the security deposit that they are holding, in the amount of \$1,049.07, for this tenancy to the Tenants within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover their security deposit for this tenancy. The Tenants are also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

The Landlord was provided with the forwarding address for this tenancy, during these proceedings. I order the Landlord to return all post-dated cheques they are holding for this tenancy to the Tenants, within 15 days of the date of this decision.

Conclusion

The Landlord's application for unpaid rent is dismissed without leave to reapply.

The Landlord is granted permission to retain \$450.93 of the security deposit they are holding for this tenancy.

I order the Landlord to return the remainder of Tenants' security deposits, in the amount of \$1,049.07, to the Tenants within 15 days of the date of this decision.

I order the Landlord to return all post-dated cheques they are holding for this tenancy to the Tenants' at the address provided to the Landlord during these proceedings, within 15 days of the date of this decision.

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: June 10, 2020

Residential Tenancy Branch