



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”), to enforce a 10-Day Notice to End Tenancy for Unpaid Rent, for a monetary order unpaid rent, for damages or compensation under the Act, for monetary loss or other money owed, for permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord submitted an amendment to their application on May 27, 2020, removing their request for an order of possession and increasing the dollar value of their claim to \$31,202.98.

The Landlord and their Attorney (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend these proceedings, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that they served the Tenant with the Notice of Hearing documents and a copy of their amendment application by email, sent on May 27, 2020. The Landlord submitted a copy of the email as proof of service.

Pursuant to the Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the “Emergency Order”), documents served by this method are deemed to have been received three days after they were sent. Accordingly, I find that the Landlord has satisfied me that the Tenant had been duly served with the Notice of Hearing in accordance with the Act.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence 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 compensation for my monetary loss or other money owed?
- Is the Landlord entitled to the recovery of the filing fee of their application?

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 testified that the tenancy began on October 15, 2019, as a one-year and two-week fixed term tenancy. That rent in the amount of \$1,600.00 was due on the first day of each month, and the Tenant paid the Landlord an \$800.00 security deposit and a \$250.00 pet damage deposit at the beginning of the tenancy. The Landlord submitted a copy of the tenancy agreement and three pictures taken at the beginning of the tenancy into documentary evidence. The Landlord confirmed that a written move-in/move-out inspection had not been completed for this tenancy.

The Landlord testified that the tenancy agreement had required the Tenant to put the electrical and gas utility accounts for the rental property in their name, but that the Tenant had not done that until November 1, 2019, resulting in a two week usage of the electrical and gas by the Tenant, that was charged to the Landlord. The Landlord is requesting to recover charges for the Tenant's usage of the electrical and gas between October 15 to October 31, 2020, in the amount of \$147.11. The Landlord provided copies of the electrical and gas bills into documentary evidence.

The Landlord testified that this tenancy ended on March 24, 2020, when the Tenant vacated the rental unit. The Landlord testified that the tenancy ended due to

nonpayment of rent, consists of \$410.75 in unpaid rent for February 2020, and \$1,600.00 in unpaid rent for March 2020. The Landlord is requesting to recover the unpaid rent in the amount of \$2, 010.75 for February and March 2020.

The Landlord testified that they are also claiming for the rent for the remainder of the tenancy agreement, from April 1, 2020 through October 31, 2020, in the amount of \$11,200.00. The Landlord testified that the tenant had returned the rental unit to them in a severely damaged state and that they were unable to effect repairs to the property until they received an award to cover the cost of the repairs.

The Landlord testified that the Tenant had cut the power cords off the fridge, stove and microwave. The Landlord submitted four pictures of the damaged appliances and a quote for the cost to replace the appliances into documentary evidence. The Landlord is requesting \$1,923.00 in the quoted purchase price of a new fridge, stove and microwave.

When asked by this Arbitrator, if the damaged appliances could be repaired, the Landlord replied that they could not be repaired as their insurance would be cancelled if they merely repaired the appliances.

The Landlord also testified that the Tenant had cut several holes in the vinyl of the outdoor deck, which had caused extensive water and mould damage to the deck and exterior walls of the rental property. The Landlord provided one picture of the vinyl deck and two email quotes for the cost to repair the deck and the rest of the house into documentary evidence. The Landlord is requesting a award of the quoted cost to repair the rental property, consisting of \$9,534.00 to repair the deck and \$6,840.00 to repair the house.

The Landlord testified that they are also claiming for \$1,000.00 in cleaning that will be required at the rental property, about three to four days worth. The Landlord provided an email quote for 33 hours of cleaning, at \$30.00 per hour, into document evidence.

When asked by this Arbitrator, if the Landlord had conducted a full inspection of the property or had an insurance inspection completed to assess the damage. The Landlord stated they had not been able to personally attend the rental unit since the tenancy ended, due to health concerns around travelling during the COVID19 pandemic. The Landlord went on in their testimony that they did have their son and son in law attend the property and that they had reported the damage to the Landlord.

The Landlord testified, after being asked by this Arbitrator, that they had not started any of the repair work to the rental property nor had they made any attempts to secure a new renter the property as of the date of this hearing.

Analysis

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

I accept the testimony of the Landlord that the Tenant did not pay the full rent for February 2020 and March 2020, in the amount of \$2,010.75, and that they had not paid the outstanding electrical and gas utility bills in the amount of \$147.11 for this tenancy.

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (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.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Pursuant to section 26 of the *Act*, I find that the Landlord has established an entitlement to a monetary award in the amount of \$2,157.86, comprised of \$410.75 in rent for February 2020, \$1,600.00 in rent for March 2020, and \$147.11 in unpaid utilities. I grant permission to the Landlord to retain the security deposit and pet damage deposit, for this tenancy, in partial satisfaction of this award.

As for the Landlord's claims for the rent between April 2020 to October 2020, and their quoted costs to repair damages and clean the rental unit, I have reviewed the entirety of the evidence submitted by the Landlord to support their claim, and I am not satisfied that the Landlord has provided sufficient evidence, to satisfy me, that the damage they are claiming exists, or that they have made the required attempts to mitigate these losses. I find that too much of the Landlord's case relied on the verbal testimony provided by the Landlord during these proceedings. It is insufficient for a claimant to merely offer their verbal account of events as evidence to support a claim. It is required that a claimant provide adequate and reliable documentation to support the verbal testimony they provide in a hearing. I will not make orders for the payment of rent between April 2020 to October 2020, or for the payment of costs to repair damages and to clean a rental unit based on unsubstantiated claims of damage.

I find these claims to be a premature application. Accordingly, I find it appropriate to dismiss the Landlord's claims for rent between April 2020 to October 2020 and their costs to repair and clean the rental unit with leave to reapply.

In addition, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been entirely successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Overall, I grant the Landlord a Monetary Order in the amount of \$1,107.86, consisting of the above award of \$2,157.86, less the \$800.00 security deposit and \$250.00 pet damage deposit, the Landlord is holding for this tenancy.

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$1,107.86**. 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.

I dismiss the Landlord's claims for the rent between April 2020 to October 2020, and for damages and cleaning with 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: June 25, 2020

Residential Tenancy Branch