



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In this dispute, the landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

1. an order of possession for unpaid rent, pursuant to sections 46, and 55 of the Act;
2. a monetary order for unpaid rent, pursuant to sections 26 and 67 of the Act; and,
3. recovery of the filing fee pursuant to section 72 of the Act.

The landlord applied for dispute resolution on March 4, 2020 and a dispute resolution hearing was held on July 10, 2020. The landlord and tenant attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

No issues of service were raised by the parties. However, I note that the tenant asked me, at the start of the hearing, if she could obtain my email address and forward me her evidence. I advised her that the time for submitting evidence had long since passed, and that I would not accept any evidence at this point. As per Rule 3.15 of the [Rules of Procedure](#), a respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on May 15, 2019 and monthly rent, as it was established in the written tenancy agreement, was \$1,500.00. The tenant paid a security deposit of \$750.00. A copy of the written tenancy agreement was submitted into evidence. These facts are about the extent of what the parties agreed upon.

The landlord testified that tenant decided, unilaterally, to reduce the amount of rent she was paying to \$1,200.00. According to the landlord, this tenant-initiated rent reduction started in November 2019. She disputes that she ever agreed to any such reduction. Further, the landlord claims that the tenant is now in arrears in the amount of \$3,500.00.

The tenant does not dispute that she has been paying rent of \$1,200.00 but argued that the landlord agreed to this reduction – allegedly by way of various oral conversations and text messages nearer to the very end of August or early September – “because of the condition of the house.” The tenant testified that she spoke to the landlord about the condition of the house, and that a reduction in rent would be appropriate, to which the landlord allegedly said, “I’d be open to this.”

The landlord disputes that any such agreement occurred, and remarked, “[the tenant] lies and exaggerates; we did not agree to lower the rent.” No copies of any such text messages of such a conversation were submitted into evidence by the tenant. As to the condition of the house itself, the tenant spoke of flooding in the kitchen and inoperability of a light fixture, among other things.

Starting in September 2019, the tenant testified that she paid \$1,200.00 in rent for September 2019, \$1,200.00 in rent for October, \$1,200.00 in rent for November, \$1,200.00 in rent for December, \$1,200.00 in rent for January 2020, \$1,200.00 in rent for February, and so on. The landlord “accepted \$1,200 every month” that the tenant started paying this lower amount, the tenant testified.

It was only when the tenant complained about the plumbing issues six months later (that is, six months after she purportedly started paying rent of \$1,200) that the landlord then

issued a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), for which the landlord seeks an order of possession.

Briefly, as to the Notice, the landlord testified that she served the Notice by posting it on the tenant’s door (with electrical tape, she specified) after the tenant refused to speak with her. A copy of the Notice was submitted into evidence, and which indicates arrears of \$900.00 that were owing as of February 5, 2020. The \$900.00 was, testified the landlord, a “combination of short of three months’ rent” worth of arrears.

Submitted into evidence by the landlord is a text conversation, dated March 4, 2020, in which the tenant says, *inter alia*, “but you better start thinking about getting this leak fixed if you aren’t going to drop the rent to \$1200.”

Also submitted into evidence by the landlord was a bank statement showing that the tenant last made a payment for full rent on October 1 and 2, 2019, and did not start paying \$1,200.00 until November 2019. There is a handwritten notation on the bottom of the bank statement in which the landlord indicates “Bank transactions Oct 1+2 was the last full rent received Nov to March [tenant] was \$300 short on rent each month”.

Finally, the landlord submitted a copy of a ledger showing rent payments between May 16, 2019 to June 11, 2010. The ledger reflects payments of \$1,500.00 up to October 2, 2019, after which the payments drop to \$1,200.00 starting November 4. (Most of the monthly payments were made in two payments of \$1,000.00 and \$200.00.) In April 2020 the tenant paid \$900.00 in rent. In June 2020 a payment of \$500.00 and another payment of \$300.00 were made.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Compensation

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The tenancy agreement clearly states that monthly rent is \$1,500.00. That the landlord may not have been addressing issues of flooding, plumbing, and so forth, are, in fact, immaterial to whether the tenant was required to pay rent.

Section 14(2) of the Act states that a “tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.” The tenant argued that the parties agreed to a decrease in monthly rent from \$1,500.00 to \$1,200.00. The landlord disputes this.

When two parties to a dispute provide equally reasonable or possible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above their testimony* to establish their claim. In this case, I find that the tenant failed to provide *any* evidence that the landlord agreed to reducing the rent to \$1,200.00.

While the landlord may have accepted \$1,200.00 payments that the tenant decided to start paying in November, this is not confirmation that the landlord accepted the lower amount to be the new rent. The tenant’s testimony that she started making payments of \$1,200.00 in September is, in fact, at odds with the landlord’s ledger which shows the tenant did not start paying the \$1,200.00 until November. Moreover, while the tenant argued that the landlord agreed to a rent reduction to \$1,200.00 in “late September or early August,” the text messages dated March 4, 2010 reveal the implausibility that any such agreement ever occurred. The tenant’s comment that “you better start thinking about getting this leak fixed if you aren’t going to drop the rent to \$1200” clearly indicates that the landlord had never agreed to any reduction in rent. Finally, as the tenant never raised the issue of whether estoppel applies, I will not address this.

As such, I conclude that the landlord never agreed to the reduction in rent, and that rent has remained at \$1,500.00 throughout the tenancy.

The landlord testified, and provided documentary evidence to support her submission, that the tenant has not paid the full rent since November 2019 and that they are now in arrears totalling \$3,500.00. Further, there is no evidence before me that the tenant had a right under the Act to not pay the full amount of rent required under the tenancy agreement.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for \$3,500.00 in rent arrears.

Claim for Order of Possession

Section 46(1) of the Act states that a landlord

may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In this dispute, the landlord gave the tenant the Notice on February 5, 2020. The tenant disputed the Notice but did not attend a previous arbitration hearing on April 16, 2020, at which the tenant's application was dismissed without leave. At that hearing, however, neither party had provided a copy of the Notice.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2)(b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this dispute, the tenant made an application to dispute the Notice, but failed to attend the hearing concerning that application, and as such her application was dismissed without leave to reapply. Therefore, given that the tenant has extinguished her right to dispute the Notice, I grant the landlord an order of possession of the rental unit. Further, I order that the tenancy ended on February 18, 2020, as indicated on the Notice.

An order of possession is granted in conjunction with this Decision.

Claim for Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant her claim for reimbursement of the filing fee of \$100.00, for a total monetary award of \$3,600.00.

Summary of Award, Retention of Security Deposit, and Monetary Order

A total monetary award of \$3,600.00 is granted to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy ended on February 18, 2020, I therefore order the landlord to retain the tenant’s security deposit of \$750.00 in partial satisfaction of the above-noted award. The balance of the amount is granted by way of a monetary order in the amount of \$2,850.00, which is also issued in conjunction with this Decision.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$2,850.00, which must be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 13, 2020