



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on December 16, 2019, in which the Landlord sought monetary compensation from the Tenant in the amount of \$985.00 for unpaid rent and N.S.F. fees as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference on May 19, 2020 and June 23, 2020. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by C.A., the Tenant Services Coordinator.

The hearing was adjourned from May 19, 2020 to June 23, 2020 by Interim Decision. This Decision must be read in conjunction with my May 20, 2020 Interim Decision.

Aside from the evidentiary issues raised at the May 19, 2020 hearing, no other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Tenants Service Coordinator, C.A. testified that this tenancy began November 1, 2017. Monthly rent was \$825.00 and was increased during the tenancy such that at the time of the hearing the rent was \$866.00.

In terms of the monetary claim before me, C.A. claimed that the following amounts remain outstanding:

Outstanding rent for June 2019	\$10.00
N.S.F. charge from December 2018 (Cheques # 3 and 4)	\$50.00
Unpaid rent for November 2018	\$825.00
TOTAL	\$885.00

The Landlord also sought the \$100.00 filing fee for a total of \$985.00 in monetary compensation.

As noted in my Interim Decision the Tenant suggested the Landlord had altered the tenant ledger. As such, when the hearing reconvened on June 23, 2020, L.H., the Landlord's Director of Finance testified as follows.

L.H. stated that the tenant ledger is a "live document". She confirmed that when an N.S.F. is charged it will alter the document. She confirmed that the ledger in the Tenant's evidence was printed on January 2, 2019. At that point in time two cheques had not been posted or accounted for because the bank reconciliation was not yet done and from her review it appeared as though it was done around January 13, 2019.

L.H. confirmed that on July 18, 2019 (the first page of the ledger) the correction for the November 2018 rent and the two N.S.F. fees were noted. This ledger also shows the \$10.00 deficit for the June 2019 rent.

The Tenant responded to the Landlord's claims as follows. She stated that she does not owe money to the Landlord and that her rent is paid in full. She stated that she paid the \$10.00 owing for June 2019 on December 18, 2019 by electronic transfer. A copy of this e-transfer was provided in evidence.

In terms of the November 2018 outstanding rent, the Tenant claimed that she paid this amount on January 7, 2019. In support she provided confirmation of electronic transfers.

The Tenant stated that the rent was \$825.00 in November 2018 and went up to \$845.00 in January of 2019.

The Tenant also claimed that she paid \$870.00 by a money order on January 2, 2019. A copy of her bank records was provided in evidence and which showed a draft of \$877.50 paid that date. The Tenant claimed that this payment included the January rent and one of the N.S.F. fees.

The Tenant stated that she does not owe rent for November of 2018. She also claimed that the first time she heard about this was in July of 2019.

The Tenant confirmed that it is her position that she only owed one N.S.F. fee (which she later paid) and that the Landlord's evidence should not be trusted as she has twice been given eviction notices in error. In support she provided a copy of a letter from the Landlord wherein they acknowledge the administration error and that the January 9, 2018 Notice to End Tenancy was done in error. In this letter the Landlord also acknowledges that they recently upgraded their accounting software. The Tenant also noted that she also received another eviction notice for the security deposit on January 15, 2018 which was also done in error. The Tenant also noted that in February of this year, she was asked for February's rent when the Tenant paid that amount on December 31, 2019. The Tenant stated that the Landlord's accounting has been problematic throughout her tenancy.

In reply, L.H., stated as follows. She stated that the \$10.00 owing for June 2019 was received in January of 2020.

In terms of the November payment, L.H. reiterated that it has not been received. She stated that two of the e-transfer payments the Tenant sent in January 2019 were "cancelled": one on February 15, and February 21. This is clearly noted in the Tenant's own banking records.

In terms of the \$870.00 money order, L.H., stated that the amount was applied on her ledger on January 23, 2019, which covered one of the reversed payments/months outstanding and which left \$875.00 outstanding. L.H. also stated that over the time period of the ledger to the end of January, there were four N.S.F. cheques and that the \$875.00 owing includes N.S.F. fees outstanding and one months rent.

L.H. confirmed that she has been working in her current capacity for 8 months.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In terms of the amounts claimed by the Landlord, I accept the Tenant's evidence that she paid the \$10.00 owing for June 2019 as the documentary evidence provided by her confirms this payment was made December 18, 2019.

On balance, I find that the Tenant owes one month rent in the amount of \$825.00. The documentary evidence before me indicates the Tenant made two payments in January 2019 (one for her January rent and one to cover the outstanding rent), but both those payments were later reversed.

I accept the Landlord's representatives' testimony that subsequently the Tenant provided the Landlord with a \$870.00 bank draft which covered one month's rent and N.S.F. fees leaving a balance of \$845.00 owing (including the \$825.00 November rent and additional N.S.F. fees).

Notably the Tenant initially testified that she paid her rent and did not acknowledge that those two payments were later reversed. When given an opportunity to respond to the Landlord's representative's testimony in this regard, she did not dispute the Landlord's evidence. I therefore award the Landlord **\$825.00** representing the amount owing for the November 2018 rent.

I dismiss the Landlord's claim for any additional N.S.F. fees. The evidence before me indicates the Landlord's accounting department has made errors with respect to the Tenant's rental payments, and this has resulted in at least one Notice to End Tenancy being given to the Tenant in error. I find on balance that it is likely those N.S.F. fees may have also been incorrectly charged.

Understandably the Tenant is concerned about the Landlord's accounting. On more than one occasion her tenancy has been in jeopardy due to the Landlord's accounting errors. It is equally understandable that she disputed the Landlord's claim. I therefore exercise my discretion and deny the Landlord's request to recover the \$100.00 filing fee.

Due to the historic issues with accounting errors, I also Order that the \$825.00 owing from the Tenant to the Landlord be paid at a monthly rate of \$68.75 for 12 months.

Conclusion

The Landlord's application is granted in part. The Landlord is entitled to monetary compensation in the amount of \$825.00 representing rent owing for November 2018. This sum shall be paid by the Tenant at a rate of \$68.75 for 12 months.

In furtherance of this, and to ensure payment the Landlord is granted a Monetary Order in the amount of **\$825.00**. Provided the Tenant makes the \$68.75 monthly payments, the Landlord shall make no use of this Order. Should the Tenant fail to make the monthly payments as ordered the Landlord may serve the Order on the Tenant and file and enforce it in the B.C. Provincial 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 *Residential Tenancy Act*.

Dated: July 17, 2020

Residential Tenancy Branch