



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “*Act*”), for a monetary order for damage or compensation under the *Act*, and to recovery the filing fee paid for this application. The matter was set for a conference call.

The Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 Tenant entitled to monetary compensation for damages under the *Act*?
- Is the Tenant entitled to the return for their filing fee for this 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 parties agreed that this tenancy began on November 9, 2019, as a six-month and 22-day fixed term tenancy. It was agreed by both the Landlord and the Tenant, that the Tenant had paid all rent due for this tenancy, in cash, consisting of \$3,800.00 for November 2019, \$1,000.00 a month for December 2019 to March 2020, and that no rent was due or paid for April and May 2020. The parties also agreed that the Landlord had been paid a \$500.00 security deposit at the outset of the tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the tenancy ended early due to the COVID-19 pandemic, on March 19, 2020, when the Tenant moved out of the rental unit, and that the security deposit had been dealt with in accordance with the *Act*.

The Tenant argued that the \$3,800.00 they had paid in November 2019 for rent had included a prepayment of rent for March, April and May 2020. The Tenant testified that they were seeking the recovery of the prepaid rent for April and May 2020, as they did not live in the rental unit during that time, and the Landlord had refused them approval to sublet the rental unit.

The Landlord testified that the \$3,800.00 in rent paid in November and be the rent charged for November 2019 only and that it did not include the prepayment of rent for March, April and May 2020, as per their tenancy agreement. The Landlord testified that they charge more in rent for November as their rental unit is in high demand in November and that they normally provided the spring or summer months for free if the Tenant agrees to stay on in the low demand season.

Analysis

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

In this claim, the Tenant has requested compensation for the recovery of their prepaid April and May 2020 rent. Awards for compensation due to damage are provided for

under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

During this hearing, I heard contradictory testimony from both parties regarding the November rent. In cases where two parties to a dispute provide equally plausible 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 has the burden of proving that the \$3,800.00 paid in November 2019, had included a prepayment of rent for March, April and May 2020.

After reviewing the evidentiary package submitted by the Tenant, I find that there is insufficient evidence to convince me, that the November 2019 rent had included a prepayment of the March, April and May 2020 rent for this tenancy. Therefore, I find that the \$3,800.00 paid in November 2019, consisted of the full payment of rent due for November 2019, only.

Overall, I accept the agreed-upon testimony of these parties, that no rent was paid by this Tenant in April or May 2020. As no rent was paid for the period, and there is insufficient evidence of a prepayment of rent, I must find that the Tenant is not entitled to the recovery of the rent for April and May 2020 as no rent was paid for this period. Consequently, I dismiss the Tenant’s claim for compensation.

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

Conclusion

I dismiss the Tenant's application without 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: August 11, 2020

Residential Tenancy Branch