



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent for the Landlord, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of his Application filing fee.

The Landlord, his wife, and their two daughters, and an agent for the Landlord, L.M. ("Agent"), as well as the Tenant and her advocate, P.K.B. ("Advocate"), appeared at the teleconference hearings and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

The first hearing was adjourned at the Tenant's request, because the Tenant's Advocate had just been retained the previous day. In addition, the Tenant advised that on July 13, 2020, the Landlord had executed a Writ of Possession for the rental unit, having retained a bailiff to remove the Tenant and most of her belongings from the rental unit. As such, the Tenant said she did not have any of the hearing documents, with which the Landlord had served her for this proceeding. The Tenant said without these documents, she and her Advocate could not prepare properly.

The Agent said that the Landlord did not agree to an adjournment, as he wants this matter resolved, as soon as possible. I found that the Tenant would be prejudiced, if we proceeded with the first hearing, as scheduled. I find this adjournment was not prejudicial to the Landlord, because if we proceeded as scheduled, the Tenant might apply to the Supreme Court of British Columbia to have my decision judicially reviewed for fairness. I find that this possibility could result in the matter continuing to be disputed for longer than it would take to reconvene the hearing in the coming weeks or months. Accordingly, I acknowledged the Landlord's concerns, but I determined that an adjournment would be the least prejudicial to both Parties, overall.

During the hearings, the Tenant and the Landlord were given the opportunity to provide

their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing; however, I note that the Tenant did not submit any evidentiary documents to the RTB for consideration.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, as well as confirming their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2017, with a monthly rent of \$900.00 (\$959.00 at the end of the tenancy), due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$450.00, and no pet damage deposit. The Parties agreed that the Tenant vacated the rental unit when the Landlord executed a Writ of Possession on July 13, 2020. This is following the Landlord having received an Order of Possession for the rental unit from the RTB dated February 21, 2020. The Tenant was ordered to vacate the rental unit on March 31, 2020 at 1:00 p.m.; however, she did not comply with this Order.

The Landlord submitted a monetary order worksheet (“MOW”), setting out that he was applying for recovery of \$4,105.00 from the Tenant in unpaid rent. This is higher than

the amount the Landlord had initially applied for, which was \$3,146.00. The Landlord said that the amount of rent owing at the time he applied for dispute resolution is lower than it was by the time of the hearing. The Landlord had initially applied for unpaid rent from February 2020 through June 2020, but the Tenant remained in the rental unit for July 2020, as well, and she did not pay the Landlord any rent that month; therefore, the Landlord requested that his Application for a monetary award be increased to reflect the changing amount of this accumulating debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary award sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, I find it reasonable to amend the amount of the monetary award sought by the Landlord from the Tenant from \$3,146.00 to \$4,105.00.

The MOW includes the following claims for unpaid rent:

| | Receipt/Estimate From | Amount Owing |
|---|----------------------------------|-------------------------|
| 1 | February 2020 rent | \$269.00 |
| 2 | March 2020 rent | \$959.00 |
| 3 | April 2020 rent | \$959.00 |
| 4 | May 2020 rent | \$959.00 |
| 5 | June 2020 rent | \$959.00 |
| 6 | July 2020 rent | \$959.00 |
| | Total monetary claim | \$4,105.00 |

The Landlord said that the Tenant owed \$269 in February 2020. The Landlord said he had agreed to waive that, if Tenant vacated the rental unit by end of March 2020, and if she paid full rent for March. The Landlord had said he would refund half of March, if the Tenant vacated the rental unit. However, she defied the Landlord's order of possession and stayed in the rental unit until the Landlord executed the Writ of Possession from the British Columbia Supreme Court.

The Landlord said he received \$959.00 from the Tenant in rent in April 2020, but he said he received no rent from the Tenant in May, June or July 2020.

The Tenant said she had no comment about the Landlord's claims in this regard, other than agreeing with the Landlord's recollection of the prior RTB decisions between the Parties.

The Tenant said:

People have forgotten we're in a pandemic, and there was no evictions, people weren't showing places during March, April, May, and June. And due to health reasons, I'm high risk.

I'm not working right now, and I lost my job, because of the pandemic. And I'm tired of being discriminated because of your sexuality from this Landlord. Other tenants – they do this, if they don't like you.

The Tenant said that she paid for May and June with money orders. She said she did not have an opportunity to retrieve her necessary documents from where her belongings are stored between hearings. She also said she has no receipts to prove her claim of having paid May and June's rent. She said: "I did for April and February, but not May and June. That was my mistake."

The Landlord said:

A couple things, the [hearing] documents are shown as received [by the Tenant] on June 23. Even if she claimed to get them on July 3, she was still there until July 13; she had ten days to get things from her possessions, such as copies of money orders. She has had two months to go back to get copies of money orders from where she got them. She has had several months to go back for this evidence.

In their last statements in the hearing, the Parties said the following: The Agent said:

It's just that the Landlord has been cooperative with [the Tenant]; we have tried to contact her on numerous occasions, and had numerous contacts with [her Advocate] to settle. The Landlord would have settled for an agreed upon amount, but [her Advocate] has spoken with [the Tenant], who is not willing to do that.

She seems concerned about allegations of discrimination. This is an issue of whether she paid rent or not.

The Tenant said:

It's against the law to discriminate against anybody for sex and race. I had no problems with them, until they found out I was bisexual. In December, [L.] said I didn't pay my rent, which I did, and on February 21, I was forced into taking that deal [settlement agreement]. I am prepared to go to the human rights board and take this to civil court.

The Advocate said that the Landlord should serve the Tenant with any orders directly. The Advocate said: "We'll supply an address", although the Tenant did not want them to know where she lives. I advised her that she cannot hide from service under the Act. She said she would ask her Mom if the Landlord can serve her there - ask her Mom if that's okay.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenant has not provided any evidence to support her contention that this proceeding is affected by the Landlord having discriminated against her in any way. I find that the issues before me involve whether or not the Tenant paid rent to the Landlord when it was due during the tenancy. As such, due to a lack of supporting evidence from the Tenant, I have not considered the Tenant's statements regarding the potential for discrimination.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I find that the Landlord provided sufficient evidence to support his claim for compensation owing by the Tenant to the Landlord in unpaid rent of \$4,105.00. I, therefore, award the Landlord with **\$4,105.00** from the Tenant, pursuant to section 67 of the Act.

Given his success in this proceeding, I also award the Landlord with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this Application meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$450.00 in partial satisfaction of the Landlord's monetary claim.

The amounts awarded and the set-off are as follows:

| | For | Amount |
|---|-----------------------------|-------------------|
| 1 | Amount unpaid rent awarded | \$4,105.00 |
| 2 | Filing fee awarded | \$ 100.00 |
| 3 | Sub-Total | \$4,205.00 |
| 4 | Less security deposit | (\$ 450.00) |
| 5 | Total monetary order | \$3,755.00 |

The Landlord is granted a Monetary Order for the balance owing to him by the Tenant of \$3,755.00, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in his Application for compensation from the Tenant for unpaid rent, as the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities.

The Landlord has established a monetary claim of \$4,205.00, including recovery of the \$100.00 Application filing fee. I authorize the Landlord to retain the Tenant's full security deposit of \$450.00 in partial satisfaction of the award. The Landlord is granted a Monetary Order under section 67 of the Act for the balance due by the Tenant to the Landlord in the amount of **\$3,755.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 22, 2020

Residential Tenancy Branch