



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, MNDCL, FFL**

Introduction

This hearing was scheduled for 1:30 p.m. on August 28, 2020 to deal with the landlord's monetary claim for unpaid and/or loss of rent against the tenant. The landlord appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord testified that she sent the proceeding package to the tenant via email on April 25, 2020 and she received a response to the email from the tenant that the landlord provided as evidence. Starting on March 30, 2020 and ending on June 24, 2020 the Director authorized parties to serve documents by email due to the COVID-19 pandemic. As such, I was satisfied the landlord served the tenant in a manner that complies with the Act, being as ordered by the Director, and the tenant received the landlord's email. Therefore, I proceeded to hear the matter in the absence of the tenant.

The landlord sought to amend the monetary claim to include loss of rent through to August 2020 since the tenant is still occupying the rental unit. The tenant served a revised monetary order worksheet upon the tenant's boyfriend on August 14, 2020. To amend a claim, the Rules of Procedure, require the applicant complete an Amendment to an Application for Dispute Resolution, along with other supporting documents, and serve it upon the respondent in a manner that complies with section 89 of the Act. A monetary claim must be served upon the respondent either in person or by registered mail or as ordered by the Director. Giving the documents to the tenant's boyfriend and without an Amendment to an Application for Dispute Resolution on August 14, 2020 did not comply with the service requirements. However, an Arbitrator may amend a claim during the hearing under Rule 4.2 of the Rules of Procedure, which provides as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord originally made a claim for unpaid and loss of rent for months up to April 2020 since she filed her Application for Dispute Resolution in April 2020. The landlord seeks to increase the claim to include loss of rent to August 2020 since the tenant is still residing in the rental unit as of the date of this hearing. In these circumstances, I find the landlord's request ought to be reasonably anticipated and I permitted the landlord to amend the monetary claim during the hearing to include loss of rent up to and including the month of August 2020.

Issue(s) to be Decided

Has the landlord established an entitlement to unpaid and/or loss of rent, as amended?

Background and Evidence

The tenancy started on June 1, 2019 and the tenant paid a security deposit of \$980.00. The tenant was required to pay rent of \$1960.00 on the first day of every month.

In January 2020 the tenant paid an unlawful \$40.00 rent increase and paid the landlord a sum of \$2000.00 for the month of January 2020. For the month of February 2020, the tenant paid \$1000.00 on February 4, 2020 and \$500.00 on February 6, 2020. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the tenant's door on February 26, 2020. The tenant did not pay any rent in March 2020.

The landlord made a previous Application for Dispute Resolution by Direct Request (file number referenced on he covers page of this decision) and the Adjudicator found the tenancy to be at an end effective March 10, 2020 pursuant to the 10 Day Notice. The Adjudicator issued an Order of Possession to the landlord on April 8, 2020 but dismissed the landlord's monetary claim with leave to reapply due to the unlawful rent increase.

The landlord submits the tenant is still occupying the rental unit despite serving the tenant with the Order of Possession. The landlord is in the process of obtaining a Writ of Possession.

By way of this Application for Dispute Resolution the landlord seeks a Monetary Order for the unpaid rent from February 2020 and March 2020 plus loss of rent for April 2020 through to August 2020.

The landlord testified that on April 3, 2020 the tenant paid \$1000.00. On May 1, 2020 the tenant sent a payment of \$2100.00 but then the tenant cancelled the payment on May 3, 2020 so no monies were received in May 2020. On June 4, 2020 the tenant paid \$2000.00 and on June 11, 2020 the tenant paid \$1960.00. On July 17, 2020 the tenant made the last payment of \$250.00.

As of the date of the hearing, the amount unpaid and/or loss of rent owed by the tenant is:

February 2020 – August 2020 rent (\$1960.00 x 7)	\$13720.00
Less overpayment in January 2020	- 40.00
Less payments:	
February 4, 2020	1000.00
February 6, 2020	500.00
April 3, 2020	1000.00
June 4, 2020	2000.00
June 11, 2020	1960.00
July 17, 2020	<u>250.00</u>
	- 6710.00
	\$ 6970.00

In support of the landlord's claim, the landlord included a copy of the tenancy agreement, documentation showing the payments made by the tenant from February 2020 onwards, and, email communications between the parties.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act

provides very limited and specific circumstances when a tenant may lawfully withhold rent. I was not provided any evidence to suggest the tenant had the legal right to withhold rent except for the \$40.00 unlawful rent increase she paid for January 2020.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1960.00 on the first day of every month under her tenancy agreement and she failed to do so for the months of February 2020 onwards. The tenancy was found to be at an end effective March 10, 2020 by an Adjudicator. Accordingly, the landlord is entitled to recover unpaid rent from the tenant for the months of February 2020 and March 2020, less the payments the tenant made and the \$40.00 overpayment.

The tenant failed to vacate the rental unit by March 10, 2020 which is a violation of the Act. The tenant was then ordered to vacate the rental unit by way of the Order of Possession issued on April 8, 2020 and the tenant did not comply with that order, further violating an order of the Director. According to the landlord the tenant still occupies the rental unit causing the landlord further losses. Therefore, I find the landlord entitled to recover loss of rent from the tenant for the months of April 2020 through August 2020, less the payments made by the tenant.

In light of the above, I grant the landlord's request to recover the amount claimed, as amended and set out in the background section of this decision, in the sum of \$6970.00.

I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

With this decision, I provide the landlord with a Monetary Order in the sum of \$7070.00 to serve and enforce upon the tenant.

The landlord did not seek to retain the tenant's security deposit and it remains in trust, to be administered in accordance with the Act.

Should the landlord suffer further losses after the date of this proceeding, the landlord may make another Application for Dispute Resolution to seek recovery of those losses.

Conclusion

The landlord is provided a Monetary Order in the sum of \$7070.00 to recover unpaid and/or loss of rent from the tenant for the months of February 2020 through August 2020.

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: September 02, 2020

Residential Tenancy Branch