



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on July 27, 2020 seeking an order to recover the money for unpaid rent and utilities, and an order for compensation for monetary loss. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 1, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

In the hearing the landlord stated that they used Canada Post registered mail to send the Notice of Hearing to the tenant. This package included the evidence the landlord presents in this hearing. The tenant’s address is that of the current rental unit where they continue to reside.

Based on the submissions of the landlord, I accept they served notice of this hearing and their evidence in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant’s absence.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent/utilities, or compensation for damage pursuant to section 67 of the *Act*?

- Is the landlord entitled to retain the security deposit pursuant to section 38 of the *Act*?
- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement on April 10, 2018. The monthly rent was \$2,180.00, payable on the 1st of each month. The tenant paid a security deposit of \$1,090.00. The tenancy started on May 1, 2018.

The landlord applied for recovery of money for unpaid rent, in the amount of \$7,610.00. These are for the consecutive months of March 2020 through to August 2020. The landlord provided a worksheet in the form of a Repayment Plan, dated August 19, 2020:

rent due	\$ amount	\$ paid
March 1, 2020	2,180.00	2,090.00
April 1, 2020	2,180.00	600.00
May 1, 2020	2,180.00	0
June 1, 2020	2,180.00	0
July 1, 2020	2,180.00	600.00
August 1, 2020	2,180.00	0
TOTAL	13,080.00	3,290.00

The total amount owing in unpaid rent is **\$9,790.00**. The landlord applied to use the security deposit amount against the amounts owing; however, in the hearing the landlord stated that they did not factor in the application of the security deposit to the repayment amounts. They were aware they were not entitled to the security deposit in an existing tenancy.

For each of 10 months upcoming in the calendar year the tenant shall pay \$979.00, due on the 1st of each month. The landlord provided this payment schedule for each installment, from October 1, 2020 through to July 1, 2021.

The landlord stated that they sent the payment plan to the tenant on August 19, 2020. The tenant responded by text message to the landlord, saying “we’re going to work it out”.

The landlord also provided a document from a major bank as proof that they applied for a 6-month mortgage deferral. In their Application, they stated: "The estimated over \$7,000.00 in deferral interest [is] as a result of unpaid rent." They did not provide the exact amount of interest because it was not yet calculated by the bank. In the hearing, the landlord stated they cannot claim through this hearing process for the interest of the deferral.

Adding a \$100.00 Application filing fee for this hearing, the total amount of the landlord's claim is **\$9,890.00**.

The tenant did not attend the hearing and did not submit documentary evidence in advance.

Analysis

I am satisfied a tenancy agreement is in place between the parties, based on the copy the landlord provided in the evidence. The landlord provided a specific term of the rental amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

Section 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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.

I accept the landlord's undisputed evidence that the tenant did not pay full rent amounts owing. The tenancy is ongoing. I find the landlord's ledger in the form of the repayment plan presents the amounts paid and owing in detail, for each of the months March, April, May, June, July and August 2020.

I find the landlord has established their monetary claim of \$9,790.00.

At the time of the landlord's Application, there was an outstanding amount of rent owing. Prior to the hearing the landlord prepared a 'Payment Plan' and presented this to the tenant. This is dated August 19, 2020.

The *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* (the "C19 Tenancy Regulation") came into effect on August 14, 2020. It defines "Affected rent" as that of the period between March 18, 2020 and August 17, 2020. With rent payments due on the first of each month, the following rent payments were due within the specified period and are affected rent:

- April 1, 2020
- May 1, 2020
- June 1, 2020
- July 1, 2020
- August 1, 2020

Here, the landlord presents a completed “Repayment Plan #RTB-14” form. It includes specific details required by the C19 Tenancy Regulations, which include: the date repayment period starts; the total amount of affected rent; the date on which each installment must be paid; and the amount that must be paid in each installment.

The total amount of affected rent, as entered by the landlord, adds the \$90.00 amount owing for March 2020. That amount was due on March 1, 2020. This is outside the scope of affected rent, with rent payments of affected rent starting *only* on April 1, 2020. This adds a fault to the payment plan as prepared by the landlord and requires a revised payment plan. Though the amount claimed is clearly established in their evidence, a miscalculation has invalidated the prepared repayment plan.

The landlord made an initial application for the recovery of interest they had accrued in defaulting on a mortgage loan. They stated in the hearing they were aware it is not something they can recover through a residential tenancy dispute resolution process. Fundamentally, that monetary issue is not one that arose through a breach of the tenancy agreement or the *Act*. For this reason, I make no award for this portion of the landlord’s initial claim.

In their Application the landlord asked to apply the security deposit against the rent amount owing. The landlord acknowledged this is not permissible under the *Act* given that this situation is that of an ongoing tenancy.

As the landlord is successful in their application for compensation, I find that the landlord is entitled to recover the \$100.00 filing fee. I add this amount to the monetary order granting the balance of March 2020 rent owing.

Conclusion

I order the landlord to complete a payment plan with revised amounts that does not include the month of March 2020. The landlord has leave to reapply after they have prepared a new payment plan and given it to the tenant. That constitutes a change in circumstances that makes the matter a new claim from the landlord. A monetary order for the amount of affected rent owing will be subject to the terms of the valid repayment plan.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$190.00 for compensation set out above. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and may be enforced as an Order of that 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 *Act*.

Dated: September 15, 2020

Residential Tenancy Branch