



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on May 12, 2020. The Landlord applied for a monetary order for unpaid rent, for a monetary order for monetary loss or other money owed, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord's daughter (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 Landlord entitled to a monetary order for monetary loss or other money owed?
- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord 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 tenancy agreement shows that the tenancy began on June 1, 2019, as a two-year fixed term tenancy. The Landlord testified that rent in the amount of \$5700.00 was to be paid by the first day of each month and that the rent consisted of \$5,500.00 in rental costs and \$200.00 in a gardening fee. The tenancy agreement recorded that the Landlord had been given a \$5,700.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord submitted a written statement that they acknowledge the \$5,700.00 security deposit taken at the outset of this tenancy had been too much and that \$2,850.00 of that deposit was put towards rent for the month of June 2019. The Landlord testified that they are holding a \$2,850.00 security deposit for this tenancy.

The Landlords testified that the Tenant did not pay the full rent for February 2020, or any of the rent for March 2020, in the amount of \$6,900.00, consisting of \$1,200.00 for February 2020 and \$5,700.00 for March 2020. The Landlord testified that the Tenant had given them written permission to retain the security deposit, to be applied against the outstanding rent for this tenancy. The Landlord is requesting a monetary order for the outstanding rent, in the amount of \$4,050.00.

The parties agreed that the Landlord had issued a 10-Day notice to the Tenant due to the non-payment of rent and that the Tenant moved out in accordance with that Notice. The Landlord submitted a copy of the move-in/move-out inspection report into documentary evidence.

The Tenant agreed that they have not paid the full rent owing for February and March 2020, and that they gave permission to the Landlord to retain the security deposit as partial payment towards the March 2020 rent. The Tenant agreed that they owe the \$4,050.00 requested by the Landlord. The Tenant testified that they are experiencing financial difficulties due to the COVID-19 pandemic.

The Landlord testified that they were able to find a new renter to take over the rental unit as of April 2020 but that they had suffered a loss in rental income as the new rental agreement was for a reduced rent amount of \$5000.00. The Landlord testified that they

had attempted to re-rent the unit for the original amount of \$5,500.00, but that they were unable to secure a new renter for that amount. The Landlord is requesting the recovery of their lost rental income for the term of the new tenancy, in the amount of \$6,000.00.

The Landlord testified that they are asking for the \$500.00 difference, per month, between these tenancies, not including the \$200.00 gardening fees. The Landlord also testified that they are only asking for 12 months of compensation, not the 13 months that had been remaining on this tenancy agreement, as the new tenancy agreement ends on April 30, 2021, one month before this tenancy would have ended. The Landlord submitted a copy of the new renter's tenancy agreement into documentary evidence.

The Tenant testified that they had also attempted to secure a new renter for the rental unit, to take over their tenancy term but that they had been unsuccessful in securing a suitable new renter. The Tenant testified that they are surprised that the Landlord is claiming for this loss in rental income as they do not recall the Landlord ever mentioning it to them as a possible claim.

The Landlord testified that they did mention it to the Tenant during their conversations surrounding securing a new renter to take over the tenancy.

The Landlord testified that they are also seeking to recover their property management fees for finding a new renter for the rental unit, in the amount of \$2,625.00. The Landlord submitted a copy of the invoice for the property management fees into documentary evidence.

The Tenant testified that they were again surprised that the Landlord was claiming for these costs as they do not recall the Landlord ever mentioning it to them as a possible claim.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

I find that these parties entered into a two-year fixed term tenancy, starting June 1, 2019, and ending May 31, 2021, in accordance with the *Act*.

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid in full for February and March 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$6,900.00, comprised of \$1,200.00 in rent for February 2020 and \$5,700.00 in rent for March 2020. I grant permission to the Landlord to retain the security deposit for this tenancy in partial satisfaction of this award.

As for the Landlord's claims for compensation in the amount of \$8,625.00, consisting of \$6,000.00 in lost rental income and \$2,625.00 in property management fees. 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.

In this case, I find that the Tenant's breach of section 26 of the *Act* resulted in the early end of this tenancy and a loss of rental income and property management fee to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of those losses and that they took reasonable steps to minimize those losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of their losses due to the early end of this tenancy. I award the Landlord the recovery of \$6,000.00 in lost rental income and \$2,625.00 in property management fees.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order in the amount of \$12,775.00, consisting of \$6,900.00 in unpaid rent, \$6,000.00 in lost rental income, \$2,625.00 in property management fees, and the recovery of the \$100.00 filing fee for this hearing, less the \$2,850.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$12,775.00**. 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, this Order may be filed in the Small Claims Division of the Provincial Court and 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 *Residential Tenancy Act*.

Dated: September 15, 2020

Residential Tenancy Branch