



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL - S

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

The property manager had named four co-tenants in filing the Application for Dispute Resolution; however, I noted that there is only one tenant identified on the tenancy agreement. The property manager stated the tenant resides with her husband and her adult children and they all signed the tenancy application form. A person who signs a tenancy application form is not necessarily a tenant. A person who resides in a rental unit is not necessarily a tenant. A tenant is a person who enters into a tenancy agreement with the landlord with respect to possession of a rental unit. The landlord provided a copy of a written tenancy agreement and the only person identified as a tenant and signed the tenancy agreement is the tenant that appeared for the hearing. While the tenant's husband and children are occupants of the rental unit; however, they do not have an obligation to pay rent to the landlord under the tenancy agreement. As such, I excluded them as named tenants in the style of cause.

The tenant pointed out the landlord incorrectly identified her on the Application for Dispute Resolution. The tenant orally provided her legal first and last name, which is consistent with the tenancy agreement, and I amended the style of cause accordingly.

I also amended the style of cause to correctly spell the city where the rental unit is located.

In filing the Application for Dispute Resolution, the landlord had requested authorization to retain the security deposit in partial satisfaction of the unpaid rent. I heard the tenancy is still in effect and the tenant has been paying down the rental arrears every month. Section 38(3) contemplates such circumstances and it is unnecessary to seek authorization to retain the security deposit at this time. Accordingly, the security deposit shall remain in trust at this time and if the tenancy should end before the Monetary Order is satisfied, the landlord may retain the security deposit to offset all or part of the outstanding rental arrears at the end of the tenancy in accordance with section 38(3) of the Act. Should the Monetary Order be satisfied before the tenancy ends, the security deposit shall remain in trust to be administered at the end of the tenancy in accordance with section 38(1) of the Act.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent, and if so, how much is owed by the tenant?

Background and Evidence

The two year fixed term tenancy started on July 1, 2019 and the landlord collected a security deposit of \$1650.00. The tenant is required to pay rent of \$3300.00 on the first day of every month. The tenant provided 12 post dated cheques, payable to the owner of the property, at the start of the tenancy.

The rent cheques for the months of September 2019 through April 2020 were dishonoured due to insufficient funds, resulting in unpaid rent of \$26400.00 [$\3300.00×8 months]. The owner is out of the country and notified the property manager of the dishonoured cheques in May 2020. The property manager communicated with the tenant by way of a letter dated May 14, 2020. Since May 2020 the tenant has paid the monthly rent of \$3300.00 plus \$500.00 to be applied towards the arrears which has decreased the rental arrears by \$2500.00 [$\500.00×5 months]. The parties were in agreement that as of the date of the hearing, the rental arrears, after applying the repayments is \$23,900.00 [$\$26400.00 - \2500.00].

The landlord seeks a Monetary Order in the amount of \$23900.00. The tenant had no objections.

Documentary evidence for this proceeding included a copy of the tenancy agreement; copies of the dishonoured cheques; and, a demand letter issued to the tenant on May 14, 2020.

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.

It is undisputed that the tenant was required to pay rent of \$3300.00 starting July 1, 2019 pursuant to the tenancy agreement and she failed to do so for the months of September 2019 through April 2020, which amounted to unpaid rent of \$26400.00 for those months. It was agreed that the tenant has paid \$2500.00 toward the rental areas by way of \$500.00 monthly payments given with the monthly rent for the months of May 2020 through September 2020, leaving a rental arrears balance of \$23900.00 as of the date of this hearing. There was no evidence before me to suggest the tenant had a legal right to withhold rent otherwise payable and the tenant did not dispute that she owes the rental arrears in the sum calculated during the hearing. Accordingly, I find I am satisfied the landlord is owed \$23900.00 in rental arrears by the tenant as of the date of this hearing and I provide the landlord with a Monetary Order in that amount to serve and enforce upon the tenant.

The landlord did not request recovery of the filing fee paid for this Application for Dispute Resolution and I make no award for such.

The security deposit remains in trust to be administered in accordance with section 38 of the Act.

Conclusion

The landlord is provided a Monetary Order for rental arrears in the sum of \$23900.00 to serve and enforce upon the tenant.

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 25, 2020

Residential Tenancy Branch