



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on May 20, 2020 seeking an order to recover money for unpaid rent, and reimbursement of 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 24, 2020. In the conference call hearing I explained the process and provided the attending parties the opportunity to ask questions.

The Application names two individuals as tenants. On my review of the documents, I find there is no reference to one of the parties in the original tenancy agreement. As such, I amend the landlord’s application to exclude the second individual named as a tenant and refer to the ‘tenant’ as referring to the individual who signed the tenancy agreement. This is the same tenant who attended the hearing.

Both parties acknowledged receipt of the prepared documentary evidence of the other, in advance of the hearing. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 67 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 those which are relevant to the issues and findings in this matter are described in this section.

The landlords and tenant signed the tenancy agreement on July 29, 2019. The tenancy started on September 1, 2019 for a fixed term ending on September 1, 2020. Rent was \$1,700.00 per month payable on the first day of each month. The tenant paid a security deposit of \$850.00 on July 29.

In the tenant's account, they provide that they told the landlord at the start of the tenancy they would not be able to afford the rent "long term". They state: "[The landlords] were completely understanding and said that they were ok with that. They also agreed to let me pay bi-monthly."

The tenant also described asking if the landlord could lower the rent "as I was having a really hard time". They state landlord agreed to reduce the rent for October November and December to \$1,500. The rent was to return to \$1,700 on January 1, 2020. The landlord denied that rent was reduced for the month of October 2019.

The tenant stated they gave their notice to end the tenancy on March 12, to have the move out on "April 12 – 15". The tenant ended up leaving early on April 1. The tenant stated: "[the landlord] told me that he would give me my damage deposit back on April 1 IF they found someone to rent to. . .He then told me that he did not find someone so therefore he was keeping my DD."

On review in the hearing, the tenant and landlords agreed on the following amounts of payment totalling \$1,050.00 owing:

- November 2019: tenant paid \$1,500; owing \$0
- December 2019: tenant paid \$1,100; owing \$400
- January 2020: tenant paid \$1,400; owing \$300
- February 2020: tenant paid \$1,350; owing \$350.

The landlord provided that March 2020 was not paid in full, and for this month the tenant owes \$1,200. Additionally, on their Monetary Order Worksheet (completed May 19, 2020) they added April 1 to April 3 rent, for \$160.00. The landlord and tenant would typically make rent arrangements where the tenant would leave money in the laundry

room for the landlord to collect. The landlord maintained they did not receive any extra amount for March 2020. Their total on the worksheet is \$3,160.00.

The TT maintains that payments were made, and the only amount owing for the month of March is \$600. March was split into a \$600 payment, and an additional \$500 transfer.

Analysis

The *Act* 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 landlords 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.

The tenant acknowledged there was a pattern of staggered payments of rent, with amounts owing. I find payments started in this fashion in December 2019. The landlord stated there was constant communication throughout.

As per Rules of Procedure 6.6, the onus to prove their case is on the person making the claim. The landlord did not provide sufficient evidence throughout to show amounts paid with clear reference to dates. Most of the hearing time was spent running through differences of opinion on amounts paid and amounts owing. The landlord did not present clear communication on whether the amount for October rent was reduced by \$200.00 as understood by the tenant. A difference in recollection of the matter does not assist in making a decision on a balance of probabilities.

Further exacerbating this difficulty is the method of payment as described by the parties. This involved cash payments being left in the laundry room, then with text messages from the tenant to the landlord to advise that payment was placed as agreed upon. With respect, this system is laden with potential for miscommunication or error.

Particularly in a situation where partial payments were accepted as a means of paying the rent, a strict system of accounting is necessary. There is no evidence of that here in what the landlord presents. There is no record of dates of payments made, nor a record of communication regarding those payments. This leaves the situation of rent amounts owing extremely difficult to resolve. There are records of bank transfers (i.e. e-

transfers) but the landlord did not resolve where these fit in as payments made to each month or whether that was a carryover from previous months.

It is clear there was an agreement in place between the parties, with the initial rent amount at \$1,700.00. I find it more likely than not the tenant's version of events is clear that the October – November – December rent amount was \$1,500 per month. With the onus on the landlord, they did not provide sufficient evidence to show otherwise. Both parties recalled a meeting in which this was discussed; however, there is no written record of the agreement.

I understand the landlord's intent here was to assist the tenant who was having difficulty with monthly rent. That is noble in and of itself; however, without a strict and accurate record, it poses difficulty when trying to recoup amounts for lost rent.

In sum, the onus to prove their claim is on the landlord. This requires quality and ample evidence. Based on a balance of probabilities, I can rely only on what either party spoke to in the hearing. I shall establish as fact what the parties spoke to; after that, I describe what is lacking in proof for the month of March.

As set out above, I find the tenant shall pay to the landlord \$1,050.00. This is a tally of each month as reviewed in the hearing.

Without a strict accounting of the month of March, I accept the tenant's account that they are owing \$600.00 for that month. This is due to insufficient evidence from the landlord that the laundry room drop-off system was an accepted practice, and past examples of communication to show what that looked like, in order to compare the pattern to what did not happen in March 2020.

For the amount added for April 2020 -- \$160.00 – the landlord did not establish that the tenant actually left 2 days after the agreed-upon move-out date.

I therefore find the landlord is entitled to an award for the amount of \$1,650.00.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. I find the amount owing is \$1,650.00. After setting off the security deposit, there is a balance of \$800.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$800.00 as compensation for the rent amounts owing.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$900.00 for unpaid rent and a recovery of the filing fee for this hearing application.

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 *Act*.

Dated: October 19, 2020

Residential Tenancy Branch