



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL, OPL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for rent pursuant to section 67; and
- An Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55.

The landlord KM attended the hearing. The tenant attended the hearing and was represented by her counsel, AC. As both parties were present, exchange of documents was confirmed. The tenant confirmed receipt of the landlord's Application for Dispute Resolution and evidence and stated there were no concerns with timely service.

The landlord did not acknowledge receipt of any evidence from the tenant and no documentary evidence was provided to me through the Residential Tenancy Branch dispute management system.

Preliminary Issue – exchange of evidence and adjournment request

Counsel for the tenant advised me that she had personally uploaded evidence to the dispute management system on Monday, September 28th. She did not record a verification of receipt from the system before ending the session. Tenant's counsel also advised me that she sent the landlord copies of the evidence she intended to rely upon by regular mail to the landlord's address in California on September 28th. Tenant's counsel acknowledged it was unlikely it would have been received within the 7 day time frame required for a respondent to provide evidence in a dispute resolution proceeding.

Tenant's counsel sought an adjournment of the hearing to provide me and the landlord with the documentary evidence that would assist the tenant in disproving the landlord's claim. The landlord opposed the adjournment request outright.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned. Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I refused the tenant's adjournment request pursuant to Rule 7.11. I determined that an adjournment of this case would not assist the parties in resolving the issues. The need for the adjournment was brought about by the neglect of the tenant's counsel in ensuring the evidence was properly and sufficiently uploaded to the Residential Tenancy Branch dispute management system and served to the landlord in accordance with section 88 of the *Residential Tenancy Act*.

Residential Tenancy Branch Policy Guideline PG-45 provides guidance regarding the factor of neglect in determining whether to grant an adjournment. PG-45 states:

2. Intentional actions or neglect

A hearing should not be adjourned and rescheduled when an applicant is making the request because they did not exchange their evidence in a timely manner.

Similarly, if a party has scheduled another activity at the same time as the hearing, the director will consider if granting the request would prejudice the other party or if the other party's fair opportunity to be heard might be impacted.

The director may adjourn and reschedule a hearing when a party claims to require more time to review evidence.

...

Circumstances for which a hearing might not be adjourned and rescheduled include:

- *a party is on vacation; or*
- *a party did not exchange evidence in a timely manner.*

Tenant's counsel remarked that if the adjournment were to be denied then she could rely upon the oral testimony of the tenant which I confirmed. I determined the tenant would be provided with the fair opportunity to be heard if the hearing were to proceed, unadjourned. There would be no prejudice to either party if the adjournment were to be granted or denied.

Preliminary Issue – tenant moved out

At the commencement of the hearing, both parties confirm that the tenant vacated the rental unit in accordance with the Two Month's Notice to End Tenancy for Landlord's Use that was served upon her. In light of this fact, the landlord acknowledges he does not require an order of possession and I dismiss this portion of the landlord's claim without leave to reapply.

The landlord also testified that he was unaware that he is required to provide the tenant with compensation equivalent to one month's rent for serving her with a Two Month's Notice to End Tenancy for Landlord's Use. The landlord agreed to decrease the compensation amount he seeks by the equivalent of \$1,000.00 to comply with section 51 of the Residential Tenancy Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for arrears in rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following testimony. Several years ago, the tenancy began between his mother, the co-landlord named on this application and the tenant named on the tenancy agreement. Although the mother was the named landlord on the tenancy agreement, this co-landlord holds a 90% share of the property. Neither he, his mother or the tenant have a copy of the tenancy agreement or were able to provide a copy of it for this hearing however both agree that rent was set at \$1,000.00 per month payable on the first day of each month. The landlord testified he never raised the rent throughout the tenancy because the tenant's husband fell ill and he felt sorry for the

remaining tenant. The landlord remarked that \$1,000.00 per month for waterfront property is far below market value. The landlord testified that a \$500.00 security deposit was returned to the tenant after the tenancy ended. The tenant acknowledges she received the \$500.00.

The landlord testified that the husband paid the rent at the beginning of the tenancy but after he became ill, the co-tenant, his wife, took control of paying it. While in 2017, all the rent was paid, the remaining tenant began falling behind on paying full rent throughout 2018. For the month of 2018, the tenant is alleged to have paid \$11,285.00 of the \$12,000.00 rent, leaving a shortfall of \$715.00.

In 2019, the pattern continued with rent not being paid on time or in full. Only \$10,560.00 of the \$12,000.00 was paid, leaving a shortfall of \$1,440.00. For January 2020, the tenant paid \$700.00 of the \$1,000.00 rent, \$680.00 of the February rent and \$760.00 of the March rent. The landlord provided a spreadsheet of payment dates and amounts of payments as evidence for this hearing. The spreadsheet also shows the tenant didn't pay rent at all for the months of May, June or July, 2020. It is unclear whether the tenant paid rent for the month of April as the spreadsheet is missing a line for the 4th month.

In cross examination, the landlord testified that a copy of the spreadsheet was provided to the tenant when he had her personally served with the Two Month's Notice to End Tenancy for Landlord's Use on June 30th. He submits that a letter from his lawyer advises the tenant to contact him if the spreadsheet was inaccurate, however I was unable to locate the letter in the landlord's documents.

The tenant provided the following testimony. She made a payment for July 2020, however it doesn't appear in the landlord's spreadsheet. She had a conversation with the landlord in March and the arrears in rent was never mentioned to her. During the conversation, the landlord and the tenant discussed how the tenant could obtain a subsidy of rent during the pandemic.

The tenant testified that she made payments of rent to the landlord before her husband passed away. He was too sick to deliver the cheques to the bank. The tenant testified she made all payments of rent throughout the tenancy and puts the onus on the landlord to provide proof it was not paid. Her counsel submits that the only way for the landlord to establish grounds for arrears in rent is to provide bank statements from the bank account where the rent was deposited. She submits that without the bank statements, the spreadsheet generated by the landlord is insufficient proof.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Although tenant's counsel submits that the landlord's failure to provide a bank statement from his bank to corroborate his testimony and evidence, I find that the inclusion of that statement is not a requirement for the landlord to prove his case. While providing the statement to me for this hearing would certainly strengthen the landlord's case, the lack of the statement provided as evidence does not diminish the evidentiary weight of the landlord's testimony and the documents that were supplied. The landlord has provided the spreadsheet to show each time rent was deposited into his account. This spreadsheet clearly identifies which rent payment correlates to which month and when it was received.

The tenant disputes the landlord's assertion that she ever missed a rent payment or made partial payments. Other than her testimony to contradict the landlord's version of facts, she has not provided any documentary evidence to corroborate this. Neither cancelled cheques nor statements from her own bank were presented to satisfy me she made the full payments of rent for each of the months claimed by the landlord. While I didn't have any of the tenant's documents before me for the hearing, the tenant was free to describe any evidence in her possession that would have strengthened her position.

Likewise, no specific testimony was provided to refute any specific line in the landlord's spreadsheet of unpaid arrears. The tenant's testimony regarding payment of rent was general, indicating simply that rent was paid. During the hearing, the tenant made reference to a July payment of rent, however she never disclosed how much that payment was for, and her counsel distinctly indicated the evidence before her was proof of payment for July 2017.

I find that the landlord has, on a balance of probabilities, established that his version of facts is more likely than not the truth. I find that the tenant has not paid rent in full for the months as shown in his spreadsheet. Failure to pay rent in full when it is due contravenes section 26 of the Act.

I find the tenant is in arrears of rent as follows: \$715.00 for 2018; \$1,440.00 for 2019. For 2020, the tenant is in arrears of \$3,860.00 for January, February and March; and \$3,000.00 for May, June and July. No evidence was adduced regarding April rent and the landlord has agreed that the tenant was not required to pay rent for the month of August because he had served her with a Two Month's Notice to End Tenancy for Landlord's Use. In total, the landlord is entitled to a monetary order in the amount of \$9,015.00 pursuant to section 67 of the Act.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$9,115.00**.

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: October 06, 2020

Residential Tenancy Branch