



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the landlord's Application for Dispute Resolution (the Application) and evidence which were sent to them by e-mail on or about June 29, 2020. I find that the tenant is duly served with the Application and evidence pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

The landlord acknowledged receipt of the tenant's evidence, which was sent to them by e-mail on October 7, 2020. I find that the landlord is duly served with the tenant's evidence pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

Preliminary Matters

The landlord submitted that the tenant is still in the rental unit. During the course of the hearing the landlord requested to amend their monetary claim to reflect the tenant's failure to pay the monthly rent for July 2020, August 2020 and October 2020, the

additional months of unpaid rent waiting for this hearing. The landlord testified that the monthly rent was paid for September 2020.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. As this is clearly rent that the tenant would have known about and resulted since the landlord submitted their Application, I allow the amendment for increased rent pursuant to section 64 of the Act.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on July 01, 2017, with a monthly rent of \$5,600.00, due on the first day of each month with a security deposit in the amount of \$2,800.00 that the landlord currently retains.

The landlord also submitted into evidence:

- A copy of a Monetary Order Worksheet which shows unpaid rent in the amount of \$900.00 of \$5,600.00 owing for March 2020, \$1,100.00 of \$5,600.00 for April 2020, \$5,745.00 for May 2020 and \$5,745.00 for June 2020;
- A text message from the landlord to the tenant with a screenshot of a bank draft dated April 16, 2020, in the amount of \$4,500.00 and a text indicating that “remaining 2k will be in soon”; and
- Copies of the landlord’s banking information taken from screenshots on their phone which shows returned items in the amount of \$5,600.00 on March 17, 2020, \$5,745.00 on April 15, 2020, \$5,745.00 on May 19, 2020 and \$5,745.00 on June 02, 2020.

The tenant submitted into evidence copies of two different receipts, one in the amount of \$683.55 for drain tile work and another in the amount of \$723.82 for a fridge repair.

The landlord testified that the current amount of the monthly rent is \$5,745.00 due to a rent increase that was given to the tenant in December 2019 and took effect as of March 01, 2020. The landlord stated that the amounts on the Monetary Order Worksheet that they had submitted were incorrect and referred to the screenshots of bank statements provided in their evidence to support the rent increase. The landlord

confirmed that a repayment plan was not provided to the tenant for the affected unpaid rent and that there was no other prior written agreement for repayment of the unpaid rent.

The landlord did not dispute the tenant's receipts for work completed and indicated that the tenant could deduct the amounts from the unpaid rent owing to the landlord.

The tenant disputed that October 2020 rent was outstanding and that they had sufficient funds in their payment to the landlord for that month. The tenant submitted that they had to pay for repairs out of their own pocket and referred to the receipts provided in evidence. The tenant did not dispute that there was unpaid rent owing although they could not confirm the exact amount themselves.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

Section 1.02 of the COVID-19 (C-19) Regulation states that a landlord must give the tenant a repayment plan if the tenant has overdue affected rent and the landlord and tenant did not enter into a prior agreement.

Residential Tenancy Policy Guideline #52, regarding repayment plans, explains "Affected Rent" as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17, 2020.

Section 1.07 (2) of the C-19 Regulation establishes that, as an exception to Part 3 of the *Act*, if a landlord gives a notice of rent increase, and the effective date of the rent increase is after March 30, 2020, the rent increase does not take effect until November 30, 2020.

Having reviewed and considered the above, although I find that it is undisputed that there is outstanding unpaid rent, I find that the landlord has not provided sufficient evidence to satisfy the burden of proof required to justify a monetary order for unpaid rent. During the course of the hearing I considered providing a repayment plan to the landlord and the tenant in my decision; however, after further consideration, I find that I am not able to sufficiently determine the amount of unpaid rent owing to the landlord

due to the fact that the landlord's testimony contradicted her submitted evidence and that there was no notice of rent increase provided in evidence.

I find that the landlord testified that their notice of rent increase was effective as of March 01, 2020 and questioned their own Monetary Order Worksheet submitted to the RTB. I find that a rent increase that was effective on March 01, 2020, would have been a valid rent increase as it was issued before March 30, 2020, prior to section 1.07 (2) of the C-19 Regulation having taken effect. In this case, the monthly rent as of March 01, 2020, would be \$5,745.00.

As the landlord testified that they gave the notice of rent increase in December 2019, I find that the notice would not have been effective until April 1, 2020, pursuant to section 42 of the *Act*. In this case, in accordance with section 1.07 (2) of the C-19 Regulation, the notice of rent increase would not be effective until November 30, 2020, and the amount of the monthly rent would still be \$5,600.00 as of March 01, 2020 through to October 2020.

For the reasons listed above concerning the timing of the notice of rent increase, I find that I am not able to sufficiently whether the amount of outstanding monthly rent for March 2020, or any of the following months up to and including October 2020, is \$5,600.00 or \$5,745.00.

I further find that no evidence was provided concerning the October 2020 unpaid rent having been paid or not paid and that the landlord and tenant had conflicting testimony. I find that it is undisputed that the tenant paid September 2020 rent which brings into question whether the October 2020 payment was successful as well. I find that the burden of proof has not been met by the landlord to determine whether the October 2020 monthly rent is actually outstanding.

Residential Tenancy Policy Guideline #52, concerning repayment plans, states that:

Where a landlord is required to give a repayment plan but no valid repayment plan has been given and no valid prior agreement exists, the arbitrator may assist the parties in completing a repayment plan that meets the requirements of the C19 Tenancy Regulation or dismiss the application with leave to reapply.

I find that it is undisputed that no repayment plan was given to the tenant for the unpaid affected rent. I further find that it is undisputed that no other prior agreement was agreed to between the landlord and the tenant for the unpaid affected rent.

In consideration of the above and the fact that I am not able to determine the actual amount of total unpaid rent, affected or otherwise, from March 2020 to October 2020, I dismiss the landlord's Application for a monetary award for unpaid rent, with leave to reapply.

As the landlord has not been successful in this application, I dismiss their request to recover the filing fee from the tenant, without leave to reapply.

Conclusion

The landlord's Application for unpaid rent is dismissed, with leave to reapply.

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 23, 2020

Residential Tenancy Branch