



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution on June 26, 2020 seeking an order to recover monetary loss of unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on October 20, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence by registered mail to the tenant on July 1, 2020. This was 22 pages of evidence, also sent by email. They sent a prepared second set of evidence to the tenant on October 2, 2020. The tenant confirmed they received both of these pieces.

The tenant also provided documentary evidence in advance of the hearing. They sent pieces to the landlord on September 11, 2020 and followed up with more on October 11 and October 12. The landlord confirmed they received these pieces in advance.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent 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

Both parties confirmed there was a verbal tenancy agreement in place. The tenancy started on November 1, 2018. The tenant initially desired to stay “a few months or so”; this is borne out in other pieces of evidence provided for this hearing. The tenant initially paid \$1000 – this was \$600 for rent, with a \$400 security deposit amount.

The parties disagree on the amount of monthly rent. The landlord presented that the rent at the start of the term was \$800; however, the tenant maintained that the rent amount was \$600. The landlord submitted they provided other tenants’ statements that can verify the rent amount was \$800. One statement is dated September 28, stating the tenant contacted the write “convincing [them] that she only paid \$600 per month. . . [they] wanted me to provide her a written statement of such.” The other statement is dated September 30 and provides: “I do remember that [the tenant] . . . disclosed to me . . .that she was paying 800 dollars rent to the landlord.”

The tenancy ended prior to the date of this hearing. The landlord presented that the tenancy ended on August 2, 2020. They served a notice to end tenancy for the reason of their use of the unit; this was not under dispute by the tenant. The tenant left the unit “in a big mess by August 31st”. The tenant confirmed that the tenancy ended: “I moved before Aug 31”.

The landlord applied for dispute resolution and claimed for the amount of June rent. This is \$600. In the hearing, they stated they are amending their application to include the amounts of rent for July and August 2020 at \$600 each – these months’ rent amounts came up after their Application for this hearing, created on June 26.

The landlord gave their version of events before and during the months of unpaid rent. They referred to both email copies and app messages which they provided in evidence.

By April 23, the landlord obtained an email address for the tenant. They stated that use of email alleviated a lot of their concerns with communication. Throughout May, the landlord reiterated with the tenant that email was “the only way to communicate” because they felt the tenant was being evasive. This also enabled them to send receipts for rent amounts received. The landlord provided a copy of April and May rent receipts, showing total amounts of \$600 for each month. April saw a carry-over amount of \$100 to the following month.

By June, the tenant did not pay the rent on time. On June 7, the landlord sent an email to give notice of this and “demand you pay me as soon as possible.” The tenant replied to say “I already give all money” and “I paid you two months rent cash and have eye witness for that after this I’m not going to reply you.” The landlord responded to this to clarify that they were

providing rent receipts “which you also started to demand.” Their other stipulation, involving use of email, was for the tenant to be “e transferring the rent to the email address I had provided you.” To be direct, the landlord stated: “you have not emailed me \$600.00., nor have you provided me any paper trail as proof of payment.”

Following this, the landlord asked for July rent payment on July 1, 2020 and stated: “Receipt will be issued after payment is received.” The tenant’s response to this on the same day was they “I already paid you more than a month ago two month rent in cash . . .and you. . .keep accusing me for false allegations that’s why I’m not answering you anymore and before 31 august I will move from here.” In a response, the landlord asked again for proof of this payment.

In their submissions, the tenant provided a written letter dated September 2, 2020. This provides that “[the landlord] said [they] only want cash.” Also, specific to April rent, they state: “I ask [the landlord] if I can pay April rent late. . . in only this case he provide me receipt.” Further: “[They] ask me to pay June and July rent together and . . .if I want to stay here without any [bother] and if I don’t want to lose this place then pay rent together.” And: “I gave him June and July rent together thought I can stay now piecefully [*sic*] . . .”

A statement from a witness provides that this individual observed the tenant pay cash in the amount \$1,200.00, and then “[The landlord] took the money and soon left after.”

In their oral testimony, the tenant stated that the landlord always wanted cash for rent payments. They stated how around these times they were feeling a lot of stress. A friend had advised them to stop replying to the landlord’s messages. Specific to the amount of August rent, the tenant stated: “why would I pay rent when I’m not even staying there.”

Analysis

The Residential Tenancy Branch Rules of Procedure provide the stated objective of the entire dispute resolution procedure. This is to “ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.” Rule 4 gives the process for amending a claim. The Applicant may so amend their application in the hearing.

The landlord here stated their intention to do so at the outset of the hearing. This was for the rent amount in subsequent months after they filed their Application, and prior to the hearing live date. The tenant was at the hearing to speak to this matter and did so directly.

I allow the landlord's amendment to the monetary amount claimed. I find this is reasonable in the circumstances where following rent was not paid. I accept the landlord's amendment to their claimed amount and thus proceed on this analysis.

The *Act* section 26 sets out the law with regard to non-payment of rent:

- (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.

From the testimony of both parties, I am satisfied that a verbal tenancy agreement was in place. The parties disagree on the specific term of the rental amount; however, I do not resolve this question here. The tenant made clear the amount they are claiming as unpaid rent for each of the months of June, July and August. This is \$600.00 per month. This is the amount the tenant insisted was the monthly rent; the landlord is not adding to this amount here to reflect what their understanding was of the original amount. Additionally, in their communications with the tenant, this is the amount they asked the tenant to pay through June and July.

Whether the amount is precise in terms of what the rent amount was is not the important piece; rather, the question is whether the landlord is entitled to recover an amount for rent as they have claimed. They claim an amount no more than \$600.00, which is what the tenant reiterated was the proper amount of rent. There is no question to resolve on this point with respect to the landlord's entitlement to recover unpaid rent. For this reason, the two accounts of other tenants who claimed the true amount of rent was \$800 are not material to the core issue here.

While the tenant maintained they had paid two months of rent in a single transaction, there is no receipt from the landlord to the tenant that shows this.

I accept the landlord's testimony that they gave receipts for amounts paid, starting in April. I find it acceptable that once they realized the tenant was having difficulty paying rent and secured a means of communicating via email with the tenant – thereby able to attach receipts and ensure the tenant received them – they began the practice of issuing receipts. This was to ensure accuracy. I find this degree of accuracy is established in the precise detail found in the copies of receipts the landlord provided. It shows the date and amounts paid and owing and even distinguishes cash from e-transfer. Moreover, it is signed by the landlord.

From this evidence, I find it more likely than not the landlord ensured receipts were in place, and forwarded to the tenant, to show amounts paid and amounts owing. Given that there is no

receipt for two months' rent paid, I find on a balance of probabilities that the tenant did not make such a payment.

The tenant provided an account from an acquaintance who states they witnessed the tenant handing the landlord two months' rent amount in cash. The landlord emphasized in the hearing that this transaction did not happen and questioned the credibility of this account. Strictly speaking, and in contrast to the landlord's provision of receipts, there is no accurate date of when this occurred. I note the tenant also did not provide an exact date of this transaction. I find a precise date is necessary. This reduces the weight of the tenant's evidence on this point.

Further, the witness' account notes "end of May or first week of June". It leaves open the question of why the tenant would pay the June rent amount at "end of May" before the date required by the agreement. This contrasts with the landlord's repeated messaging – in a printed record -- starting on June 6 that payment was not made.

The tenant's account contains their statement that the landlord asked for June and July rent to be paid together. I find this contrasts with what the landlord presents – in the form of recorded emails – as their requests for June rent, separately and a few days after June 1st. The evidence provided by the landlord stands in contrast to the tenant's version of events. Even accounting for misunderstanding, I find it clear that the landlord was not asking for a double rent amount.

Moreover, if the tenant *had in fact* made double payment, this would make the need for a receipt to document this all the more important. There is no viable reason why they did not ask for a receipt at any time.

Given the landlord's vigilance in ensuring that communication was recorded via email, and receipts issued, I find it untenable that the landlord did not issue a receipt or make a demand for two months' rent in written form. It seems the tenant was unable to clear up any confusion on this point by the end of June, even with the landlord's insistence that communication via email must occur.

I find the communication provided by the landlord is clear and on-point, and not open to differing interpretation on what occurred. Overall, I find the landlord's evidence more credible on this point. In short, the landlord's account is documented – I find it is less likely to rely on recall.

For these reasons, I order the tenant to pay rent to the landlord for the months of June and July 2020. The tenant did not provide sufficient evidence to show otherwise.

Regarding the month of August, I accept that the tenant moved out in that month. In any case this was after the 1st of the month when rent becomes due. Had the tenant wished to move out earlier than the given end-of-tenancy date of August 31, they should have given proper notice they were doing so. As the tenant stated: "I moved before Aug 31." They also stated: "I'm not answering you anymore and before 31 august I will move from here." There is no record of the landlord's agreement to this – this is not proper notice to the landlord of a firm date. As such, the tenant breached the *Act* on this finer point.

The tenant's non-payment of rent thus continued into August. The tenant shall pay the landlord rent for this final month. The total owing by the tenant is \$1,800.00.

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 \$1,900.00. 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 *Act*.

Dated: October 28, 2020

Residential Tenancy Branch