



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent and unpaid strata fines, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

In this case, the landlords have filed evidence in relation to damages to the rental unit. I find that issue is before me and will not be considered at this hearing. The landlords are a liberty to file an application for damages.

Issue to be Decided

Are the landlords entitled to a monetary order for unpaid rent and unpaid strata fine?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2018. Rent in the amount of \$2,150.00 was payable on the first of each month. Rent was increased in accordance with the Act to the amount of \$2,200 commencing June 1, 2019. The tenant paid a

security deposit of \$1,075.00 and a pet damage deposit of \$1,075.00. The tenancy ended on September 12, 2020.

The landlord testified that the tenant became in rent arrears in April 2020 and continued to be in rent arrears each month thereafter. The landlord stated in September 2020, the tenant did not pay rent, and was evicted in accordance with section 46 of the Act.

The landlord testified that rent is owed as followed and request a monetary order in the total amount of \$7,300.00 for unpaid rent.

| | Rent due | Payments | Balance due |
|----------------|------------|--------------------|-------------|
| April 2020 | \$2,200.00 | \$800.00 | \$1,400.00 |
| May 2020 | \$2,200.00 | \$800.00 | \$1,400.00 |
| June 2020 | \$2,200.00 | \$1,300.00 | \$ 900.00 |
| July 2020 | \$2,200.00 | \$2,000.00 | \$ 200.00 |
| August 200 | \$2,200.00 | \$0 | \$2,200.00 |
| September 2020 | \$2,200.00 | \$0 | \$2,200.00 |
| | | Total Rent Arrears | \$7,300.00 |

The landlord testified that the tenant signed a form K when they entered into the tenancy agreement, which states they will follow the strata rules and are responsible for all fines. The landlord stated that the tenant had many offences, which most were waived by the strata; however, after a second offence for hanging blankets off the balcony the tenant received a \$200.00 fine. The landlord seeks to recover the cost of the strata fine in the amount of \$200.00.

The tenant testified that they did their best to pay the rent; however, with the state of emergency they lost their job and they had two children to support. The tenant stated that they do not dispute the landlord's calculation; however, they are upset because they truly did their best.

The tenant testified that they do not feel that they should have to pay all the rent for September 2020, as they vacated the premise on September 12, 2020 based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant testified that they did receive a strata fine for hanging towel off the balcony. The tenant stated they found it more effective to dry these items this way; rather, than wasting energy by using the cloth dryer.

The tenant submit that if they are responsible for the unpaid rent and strata fee, that they would like a payment plan that would divide the amount owed by 26 pay periods, which payments would commence on November 5, 2020 by etransfer.

The landlord submits that they are not opposed to the payment plan, so long as the payments are made. The landlord stated that if any payments are missed or late that they want the full amount due and owing in order for the order to be enforced.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (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.*

...

I accept the evidence of the tenant that they did their best to pay the rent during the state of emergency and to support their family. However, that did not mean that rent was not due and owing or that it would not have to be repaid at some point.

While I accept the tenant vacated the premise on September 12, 2020, that was for failure to pay the rent that was already owed on September 1, 2020. A tenant is not entitled to prorated rent, when they have violated the Act, such in this case rent was not paid. The landlord is entitled to be in the same position had the tenant not breached the Act. This why the landlord is entitled to the full rent and not prorated for September 2020.

Based on the above, I find the tenant breached the Act, when they failed to pay rent, and this caused losses to the landlords. I find the landlords are entitled to recover unpaid rent as shown above in the total amount of **\$7,300.00**.

I am further satisfied that the tenant is responsible for the strata fine. The tenant was fully aware they could not hang items, such as towels off the balcony and after the second warning received a fine of \$200.00. I find the tenant is responsible for the fine. Therefore, I find the landlords are entitled to recover the strata fine in the amount of **\$200.00**.

I find that the landlords have established a total monetary claim of **\$7,600.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,075.00** and pet damage deposit of \$1,075.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$5,450.00**.

I further order that the above amount be paid in the repayment plan proposed by the tenant, which was agreed to by the landlord. The tenant is to pay the amount of \$209.61 commencing November 5, 2020, and the like sum every two weeks thereafter until the full amount is paid. Any missed or late payments the full amount, less any payments, become immediate due and owing. This order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

At this hearing the tenant did not provide a forwarding address; however, the tenant confirmed their email address for service at this hearing. The landlords can provide a copy of this Decision with any future application to show that the tenant was using and requesting this email address be used for service. A delay in filing any future claim may impact the request for substitutional service. I have noted the tenant's email on the covering page of this decision.

Conclusion

The landlords are granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 30, 2020

Residential Tenancy Branch