



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On November 10, 2020, the Landlord made an application for Dispute Resolution seeking a Monetary Order for Rent in the amount of \$1,700.00 and to recover the filing fee pursuant to section 72 of the *Act*. The Landlord testified that he did not pay a filing fee for his application due to a COVID directive from the Director, and as such withdrew his claim to recover the filing fee.

This matter came before me as a result of a Review Consideration Decision issued September 17, 2020. The original hearing decision was issued on September 9, 2020; neither the Landlord nor Tenant appeared on the date of the first hearing.

The Landlord attended this hearing, however no one attended for the Tenant. The Landlord, being the only participant in attendance, provided a solemn affirmation.

On September 23, 2020, by way of email, the Landlord sent the Tenant a Notice of Hearing for this appearance, a Review Consideration Decision, the Notice of Dispute Resolution Proceeding, and evidence including: Monetary Order Worksheet, Tenancy Agreement, screenshots of written communications, and a banking statement.

The Landlord was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written evidence before me that meets the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

As a preliminary matter, I must address whether the Landlord adequately served the documents to the tenant for the purposes of the *Residential Tenancy Act* (the “Act”).

Under sections 88 and 89 of the *Act* all documents must be given or served in a prescribed manner. The Landlord sent documents to the tenant by way of email only, which is not a manner prescribed under section 88 or 89 of the *Act*, and which was not an approved method of service for the Landlord to use.

The Landlord testified that he served the Tenant the required materials and associated evidence by way of email on two occasions, first in advance of the original hearing date, and second, in advance of this hearing date. The evidence shows that the documents were sent to the Tenant in compliance with required timelines.

The Landlord testified he sent the documents by way of email for the following reasons:

- 1) When the Landlord initially applied for dispute resolution in May 2020 a Director’s Order for substitute service was in effect, and he believed this to still be in effect when serving documents for the second hearing date;
- 2) The Landlord and Tenant had executed the Tenancy Agreement and communicated successfully by way of email in the past; and
- 3) The Landlord was informed by a friend of the Tenant that the Tenant had moved back to Nigeria, and the Landlord is no longer able to successfully communicate with the Tenant through WhatsApp (being the other method of communication between them aside from email). No forwarding address was provided by the Tenant.

The Landlord testified that he communicated to the Tenant’s friend that this hearing was scheduled but does not know whether the friend passed this information along to the Tenant. Further, the Landlord testified that the unit was vacated by the Tenant sometime between March 2, 2020 and April 30, 2020, when she “disappeared”. The Landlord has since sold the unit.

While the Landlord was incorrect with respect to the applicability of the Directors Order for substitute service, as it was rescinded June 24, 2020, I accept that the Landlord made reasonable attempts to serve the Tenant, as email remains his only known way of communicating with the Tenant. Further, I find the evidence shows the Tenant is unlikely to receive material if served according to the *Act* as the Landlord has no forwarding address for the Tenant, who I accept is now living in Nigeria.

In accordance with section 71(2)(c) of the *Act*:

Director's orders: delivery and service of documents

71 (2) In addition to the authority under subsection (1), the director may make any of the following orders:

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

I find the documents the Landlord sent to the Tenant by way of email were sufficiently given or served for the purposes of the *Act*.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for Rent?
- Is the Landlord entitled to retain the Security Deposit?

Background and Evidence

The evidence shows a Tenancy Agreement signed by the Landlord and Tenant on April 6, 2019 with a fixed term tenancy beginning on May 1, 2019 and ending April 30, 2020. The agreement shows rent in the amount of \$1,700 is to be paid on the 1st day of each month. The Landlord testified the tenant paid a security deposit in the amount of \$850, being half a month's rent, and that the Landlord continues to hold the security deposit.

A screen shot of a WhatsApp instant message communication between the Landlord and Tenant on April 2, 2020 shows a request from the Tenant to be late paying rent for the month of April, and the Landlord agreeing to a two-week delay. The screen shot further shows the Landlord messaging the Tenant "it's been 2 weeks now", with no reply message and a following message from the Landlord communicating "it's been 3 weeks now. Please pay your rent ASAP", again with no reply from the Tenant.

The Landlord also provided a screen shot of a bank statement over the period of Jan 1, 2020 to May 14, 2020 showing no deposit from the Tenant for the April rent, but confirming rent was previously paid by the Tenant by way of E-transfer to this account.

Analysis

Under section 67 of the *Act* I may determine the amount of and order a party to pay compensation when loss results from a party not complying with a tenancy agreement:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The undisputed evidence shows that the tenancy agreement requires payment of rent in the amount of \$1,700 per month until the end of the fixed term being April 30, 2020, and that the Tenant did not pay \$1,700 for the month of April 2020.

Accordingly, I find the Tenant failed to comply with the tenancy agreement resulting in a loss of \$1,700 to the Landlord.

As the Landlord holds an \$850 security deposit and has been successful on his application, I find that he is entitled to retain the \$850 security deposit in partial satisfaction of the payment owing to the Landlord. Accordingly, \$850 remains outstanding for the Tenant to pay to the Landlord.

Conclusion

The Landlord is granted a monetary order in the amount of \$850.00, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: November 12, 2020

Residential Tenancy Branch