



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, MNRL-S, FFL, MNDCL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was scheduled by teleconference. The landlords attended ("the landlord"); the tenants attended ("the tenant"). All participants had the opportunity to provide affirmed testimony, present evidence and make submissions.

Preliminary Issue # 1 – Withdrawal of Application for Order of Possession

The landlord testified as follows: be ex parte application, the landlord obtained an Order of Possession and a Monetary Order for outstanding rent for August 2020 on September 21, 2020, copies of which were submitted. The Order of Possession was executed by the Bailiff on September 25, 2020 and the tenant vacated at that time which was acknowledged by the tenant.

Accordingly, the landlord withdrew the application for an Order of Possession.

Preliminary Issue # 2 - Service

The landlord testified the landlord personally served the tenant with the Notice of Hearing and Application for Dispute Resolution on August 21, 2020. The landlord submitted a copy of a photo of one of the landlords standing before a residential door which the landlord testified was the residential address of the tenant. The photo shows the landlord holding a brown letter-sized envelope which the landlord testified included the Notice of Hearing and evidence package. The landlord submitted a copy of the envelope addressed to the tenant and a hand written letter from an observer to the service.

The tenant acknowledged receipt of service that day but testified that the envelope only contained the Notice of Hearing.

I have reviewed the testimony of the parties. I find that the landlord's testimony of service is credible as it is supported by photographs, a witness' letter, and an acknowledgement by the tenant of receipt of part of the documents. I find it more likely than not that the landlord included all documents in the envelope.

I therefore find the landlord served the tenant as required under the Act.

Preliminary Issue # 3

The tenant testified they filed documentary evidence and acknowledged they did not serve the evidence upon the landlord. The landlord testified they did not receive any of the evidence prior to the hearing.

As the tenant has not complied with requirements of the Act and Rules of Procedure regarding the service of evidence, I will not consider any documentary evidence

submitted by the tenant which was not served as required.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began December 1, 2019 for monthly rent of \$1,750.00. at the beginning of the tenancy, the tenant paid a security deposit of \$800.00 which the landlord holds.

The landlord testified as to the condition of the unit and submitted many photographs purportedly showing required cleaning and repairs for which the landlord intended to claim further damages and compensation. The landlord asserted the tenant was a problematic tenant in terms of noncooperation, setting off fire alarms, unauthorized occupants, noncompliance with parking, unpaid rent, damages and required repairs.

The landlord testified a condition inspection was conducted on moving in, a copy of which was not submitted. A condition inspection was not conducted on moving out as the tenant was moved out by the Bailiff. The tenant did not provide a forwarding address.

The landlord clarified the claim as follows:

ITEM	AMOUNT
Rent outstanding 4 months (April, May, June, and July 2020; \$100.00 monthly x 4 months)	\$400.00
August 2020 unpaid rent	\$1,750.00
Bailiff fee	\$1,334.01
Filing Writ	\$120.00
Bailiff fee for dumping refuse, lock change	\$150.00
Filing fee	\$100.00
TOTAL CLAIM BY LANDLORD	\$3,854.01

The submissions of each party to the individual claims is reviewed.

Rent outstanding 4 months (April, May, June July 2020)

The parties agreed that the tenant withheld \$100.00 a month from the rent prior to vacating the unit.

The tenant testified that the landlord agreed that the tenant could reduce the rent paid by this amount because the landlord stopped providing the WIFI and the tenant now incurred that extra expense.

The landlord denied the tenant's claim that there was any such agreement.

The landlord submitted a copy of the tenancy agreement which does not require the landlord to provide WIFI. The landlord submitted monthly letters to the tenant pointing out the shortfall in the rent payments and requesting that the tenant pay the outstanding amount. The landlord submitted a copy of a Repayment Plan dated August 21, 2020 which show these amounts outstanding.

August 2020 outstanding rent

The landlord claimed that the tenant did not pay rent for the month of August 2020. The landlord submitted a copy of a letter requesting the tenant to pay the amount after it was due, a copy of the tenancy agreement, and a copy of the previous ex parte application which found that the tenant had not paid rent for September 2020 for which a Monetary Order was granted.

The tenant stated that the tenant paid rent for both August and September 2020 by cash and did not obtain a receipt.

The landlord testified the landlord always submitted a receipt for payments from the tenant.

The landlord submitted a copy of a structured Repayment Plan for repayment of rent after the State of Emergency which shows the rent outstanding for August 2020.

Bailiff fee for dumping, lock change, Filing Writ, Bailiff fee

The landlord claimed reimbursement for these expenses in the amounts claimed. The landlord submitted receipts for all expenses, a copy of the Writ, a letter from the Bailiff, and bank documents attesting to the expenses.

The tenant acknowledged the bailiff attended at the unit but denied the landlord is entitled to compensation for these expenses.

Filing fee

The landlord requested reimbursement of the filing fee.

Analysis

I have considered all the submissions and refer only to key facts. The landlord submitted almost 100 documents and the hearing lasted 54 minutes. Only relevant findings are referenced.

I find the landlord's submissions to be persuasive, credible, calm and forthright. I accept their testimony, supported by well-organized and complete documentary evidence, that the landlord took all reasonable efforts to collect outstanding rent, including a Repayment Plan, and incurred the damages claimed.

I found the tenant to be less reliable. The tenant denied all claims by the landlord despite persuasive evidence to the contrary. I find the tenant's evidence on several counts was inconsistent, unlikely and unsupported by the facts as presented and

understood by me. For example, while the tenant acknowledged that the landlord obtained an Order of Possession and retained the services of a Bailiff to evict the tenant, the tenant protested their right to remain in the unit.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

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

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

The landlord must meet the burden of proof with respect to each claim. Each of the landlord's claims are considered in turn.

Rent outstanding 4 months (April, May, June July 2020); August 2020 outstanding rent

The landlord testified the tenant did not pay rent due on August 1, 2020 and withheld \$100.00 monthly from the rent for four months without valid reason.

I have considered the parties' testimony and evidence in light of my findings regarding credibility, I have considered the landlord's substantial documentary evidence which I find established that the tenant did not pay the full rent as required and did not pay rent for the month claimed. Accordingly, I find that the tenant is responsible for the outstanding rent as claimed.

I therefore find the landlord has met the burden of proof with respect to this aspect of the claim. I find that the tenant is responsible to reimburse the landlord for amounts of rent outstanding as claimed.

I allow the landlord an award for outstanding rent as claimed.

Bailiff fee for dumping, lock change, Filing Writ, Bailiff fee

I accept the landlord's evidence as supported by the previous referenced Decision, that the landlord obtained vacant possession of the unit after obtaining an Order of Possession which was enforced by bailiffs on September 27, 2020. I accept the landlord's testimony supported by copies of receipts as to the expenses for filing a Writ and retaining the Bailiff. I find the tenant was in breach of the agreement by failing to pay rent when due, that the landlord took reasonable and necessary steps to obtain vacant possession of the unit, and the landlord incurred the expenses claimed.

I do not find credible the tenant's attempt to explain that the tenant was somehow not responsible.

In conclusion, I find that the landlord has met the burden of proof on a balance of probabilities that the landlord is entitled to a monetary award for compensation as claimed

Summary

I grant the landlord a monetary award for the following:

ITEM	AMOUNT
Rent outstanding 4 months (April, May, June, and July 2020; \$100.00 monthly x 4 months)	\$400.00
August 2020 unpaid rent	\$1,750.00
Bailiff fee	\$1,334.01
Filing Writ	\$120.00
Bailiff fee for dumping, lock change	\$150.00
Filing fee	\$100.00
TOTAL AWARD LANDLORD	\$3,854.01

Filing fee and security deposit

Pursuant to section 72, the landlord is entitled to reimbursement of the filing fee and authorization to apply the security deposit to the award which is summarized as follows:

ITEM	AMOUNT
Total award landlord	\$3,854.01
(Less security deposit)	(\$800.00)
Monetary Order Landlord	\$3,054.01

I grant a Monetary Order to the landlord of **\$3,054.01**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$3,054.01**. This Monetary Order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to 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 06, 2020

Residential Tenancy Branch