



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the landlord's three agents, landlord JG ("landlord's agent"), "landlord AG" and landlord RS ("landlord's co-owner"), the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his three agents had permission to speak on his behalf. The tenant confirmed that his advocate had permission to speak on his behalf. This hearing lasted approximately 58 minutes.

The tenant's advocate confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord's agent confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include the legal name of the tenant, which was confirmed by his advocate during the hearing and with legal documents submitted by the tenant for this hearing. I do not find prejudice to either party in making this amendment.

Preliminary Issues

The tenant's advocate raised two preliminary issues at the outset of the hearing. He stated that the landlord's application was *res judicata* and that the landlord passed the two-year limitation date, by applying for unpaid rent more than two years after it was discovered by the landlord.

The tenant's advocate claimed that the landlord's application is *res judicata* because it was already dealt with at a previous RTB hearing on September 12, 2019, after which a settlement agreement was issued on September 13, 2019. Neither party provided a copy of the previous RTB settlement agreement. Both parties agreed to the terms of the settlement during the hearing, when the landlord's agent read them out loud. Both parties agreed that the tenant agreed to vacate the rental unit on September 30, 2019 and settled the filing fee issue. Both parties agreed there were no other terms included in the settlement. The tenant's advocate claimed that the Arbitrator made comments and the landlord provided a monetary order worksheet for unpaid rent, so since the matter was raised and discussed, it was settled between the parties.

The landlord's agent stated that there were no monetary claims made or settled at the previous RTB hearing, as the only settlement reached was regarding an order of possession and the filing fee. He said that the landlord's application is not *res judicata*.

The tenant's advocate claimed that the landlord filed this application in August 2020, so any rent being sought could only be from September 2018 to present. He said that the landlord cannot claim for rent dating back to July 2017, as is claimed in this application. He stated that the limitation date is based on discoverability and the landlord knew about the unpaid rent the entire time. The landlord disputes the tenant's position.

During the hearing, I notified both parties that this matter was not *res judicata* and I had the jurisdiction to deal with it. I informed them that the previous RTB hearing settlement terms, from the information supplied by the parties, only dealt with an order of possession and the filing fee, not any monetary issues including for unpaid rent.

Section 60(1) of the *Act* states the following:

Latest time application for dispute resolution can be made
60(1) *If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*

I informed both parties that the two-year limitation date only applies to the end of the tenancy, which ended on September 30, 2019 and this application was made on August 12, 2020, which is within the two-year period. Therefore, the landlord is not out of time to file this application and I have the jurisdiction to deal with it.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for compensation under the *Act, Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on July 1, 2017 and ended on September 30, 2019. Monthly rent in the amount of \$3,500.00 was payable on the first day of each month. A security deposit of \$1,500.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$24,816.40 and the \$100.00 filing fee paid for this application. The tenant disputes the landlord's entire application.

Landlord AG stated that between July 1, 2017 and September 1, 2019, the tenant failed to pay rent of \$23,000.00 of the \$88,500.00 owed, since only \$65,500.00 was paid by the tenant. The landlord provided a spreadsheet of all the payments made by the tenant during the above time period. The landlord's agent stated that the rent at the beginning of the tenancy was \$3,000.00 as of July 1, 2017 and it was increased to \$3,500.00 as of July 1, 2018, with the agreement of the tenant.

Landlord AG stated that the landlord was also seeking to recover her professional services fee for preparing for this hearing on behalf of the landlord of \$1,816.50, as per the invoice.

The tenant's advocate stated the following facts. While the tenancy began on July 1, 2017 and ended on September 30, 2019, this was for other sublet tenants who lived at the rental unit with the tenant's permission as a manager of the property. The tenant did not live at the rental unit and this is a family matter, not a tenancy. The tenant was acting under a power of attorney relating to estate matters for the landlord, who is his father. The tenant was entitled to manage the landlord's properties, including finding tenants, collecting deposits, and making mortgage payments. The tenant did not make any rent payments and did not pay a security deposit to the landlord because this was not a tenancy. The cash payments made by the tenant, in the spreadsheet provided by the landlord, were towards different mortgages for different properties, as the tenant's role as a power of attorney for the landlord. These payments were for Canada Revenue Agency ("CRA") purposes.

The tenant's advocate stated the following facts. The tenant did not sign any written tenancy agreement with the landlord or with other sublet tenants, nor did he issue any notices to end tenancy to the sublet tenants. The landlord's co-owner, who is the tenant's brother, forged the tenant's signature on all of the above documents. The tenant provided a copy of a power of attorney from the landlord title office, which shows his real signature under his legal name, which is different from the forged signature under his nickname. The two previous RTB hearings, where the tenant asked for an order of possession and other tenancy-related issues, were for his sublet tenants, not for himself, despite his applications stating that he had rented the house from his father for 11 years, was locked out of the rental unit, and he sublet the unit to other people. The tenant provided copies of a written tenancy agreement between the tenant and two other sublet tenants, who he agreed he rented the unit to, but said that he did not sign the agreement with them. The tenant also provided copies of two notices to end tenancy issued to the two sublet tenants but denied signing those documents as well.

The landlord's co-owner confirmed that he did not forge the tenant's signature on any documents. The landlord's agent stated that the tenant signed and issued the notices to end tenancy for his sublet tenants and drafted and signed the written tenancy agreement himself and gave it to the landlord to sign. The landlord's agent said that when he inspected the rental unit on September 3, 2019 at 11:15 a.m., the tenant confirmed that he was occupying a suite in the basement and living at another house as well. The landlord's agent claimed that there were also other sublet tenants living at the rental property when he inspected it on that same day.

Analysis

I find that this is a residential tenancy between the tenant and the landlord under the terms of a written tenancy agreement that was signed by both parties. I find that the tenant's signature on the tenancy agreement was his own, was not forged by anyone else, and it matches the signatures on the sublease agreement with two other sublet tenants, and two other notices to end tenancy. The tenant agreed that he sublet the unit to those two other tenants. The tenant was the party that provided copies of the notices to end tenancy and the sublease agreement for this hearing. I find that all of these documents were signed by the tenant.

I find that the tenant lived at the rental unit during this tenancy and sublet the rental unit to other sublet tenants. I find that the payments made by the tenant, initially of \$3,000.00 and then of \$3,500.00, were payments for rent, not for any power of attorney duties, mortgages, managing properties, or for CRA reporting purposes. Most of the payments made were either in the amount of \$3,000.00 or \$3,500.00 each, the amounts indicated for rent or agreed between the parties. I find that the rent was initially \$3,000.00 per month when the tenancy began and then both parties agreed to a higher amount of rent as of July 1, 2018 of \$3,500.00 per month. I find that the tenant initiated two previous RTB applications to obtain possession of the rental unit and for other orders related to an ongoing tenancy, because in his description for both applications, he was renting the unit from his father and subletting it to other tenants. I accept the testimony of the landlord's agent, who confirmed that he saw and was told by the tenant that he was living at the rental unit on September 3, 2019, along with other sublet tenants.

As per section 26 of the *Act*, the tenant is required to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord provided sufficient evidence that the tenant failed to pay rent of \$23,000.00 to the landlord between July 1, 2017 and September 1, 2019. Therefore, I find that the landlord is entitled to \$23,000.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,500.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 72 of the *Act*, I order the landlord to retain the security deposit of \$1,500.00 to offset against the monetary order of \$23,000.00, leaving a balance due of \$21,500.00.

The landlord's application for \$1,816.50 for landlord agent fees to prepare for this hearing, is dismissed without leave to reapply. The only hearing-related fees recoverable under section 72 of the *Act*, is for filing fees.

As the landlord was partially successful in this application, I find that he is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's security deposit of \$1,500.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$21,600.00 against the tenant. 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.

The landlord's application for a monetary order for \$1,816.50 for landlord agent fees to prepare for this hearing, is dismissed without 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: December 03, 2020

Residential Tenancy Branch