



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord

The tenant's application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

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.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenant moved into the premise in August 2018. Rent was \$1,600.00 per month. The tenant paid a security deposit of \$800.00. On November 1, 2019 the parties entered into a new tenancy agreement and two additional tenants were listed on that agreement. Rent in the amount of \$1,750.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00. The tenancy ended on July 1, 2020.

The landlord's agent stated they did not list the other co-tenants in their application as they do not know where they are living.

Tenant's application

The tenant submits that they gave the landlord their forwarding address on July 9, 2020, and that the landlord did not return their security deposit.

The landlord submits that they had the right to retain the security deposit for unpaid rent. The landlord submits their application for dispute resolution was filed on July 11, 2020, which was within 15 days of receiving the tenant's forwarding address.

Landlord's application

The landlord claims unpaid rent as follows:

Rent of \$1,750.00 is due on the 5 th	Rent paid	Balance owing
April 2020	\$500.00	\$1,250.00
May 2020	\$900.00	\$2,100.00
June 2020	\$900.00	\$2,950.00
	Total claimed	\$2,950.00

The landlord's agent testified that the tenant did not pay all rent owed under their tenancy agreement. The landlord seeks to recover the balance due of unpaid rent as shown above.

The tenant testified that their roommates left, and they lost their job during the state of emergency. The tenant stated that the landlord agreed that their rent would be \$500.00 per month, plus any rental subsidy they received.

The landlord's agent testified that they never agreed to waive the amount of rent listed in the tenancy agreement. The agent stated that the tenant told them that they could only afford to pay the amount of \$500.00. The agent stated that they directed the tenant to CERB and BC Renters fund for assistance. The agent stated they expected they would receive at least \$1,000.00 per month and eventually the tenant would make up the balance.

The landlord's agent testified that the landlord's operating costs for the rental property is \$1,500.00 per month and it would be unreasonable for the landlord to operating at such a significant loss. Further, the tenant paid \$600.00 for May and June 2020 and a rent subsidy of \$300.00 for those months, which does not support they agreed to rent being lowered to \$500.00.

Filed in evidence are text messages which read as follows:

[tenant] April 22

".... **Will I have to pay 1750 next month or the month after?** Coz if that's the case then I won't be able to. Just giving you a heads up"

[Reproduced as written.]

[My Emphasis added.]

[landlord's agent] April 23

" **Yes that is how much the total rent is.** My mum pays a total of a little over \$1500.00 every month. Hopefully the rental from government will pay \$500.00 and you pay separately only \$500.00. so total will be \$1000.00 only. Thanks."

[Reproduced as written.]

[My Emphasis added.]

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, both parties have the burden of proof to prove their respective claim.

Tenant's application

In this case, the tenant filed an application for the return of double the security deposit. The tenant gave the landlord their forwarding address on July 9, 2020. The landlord filed an application for dispute resolution on July 11, 2020, for unpaid rent. I find the landlord has complied with section 38 of the Act, and the tenant is not entitled to double the security deposit. Therefore, I dismiss the tenant's application. Since the tenant was not successful with their application, I find they are not entitled to recover the cost of the filing fee.

Landlord's application

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.*

...

In this case, there is a written tenancy agreement. Rent is \$1,750.00 per month. I accept the evidence of the tenant that when their roommates moved out and they lost their job that they could not afford the rent.

However, I am satisfied that the landlord did not lower the rent to \$500.00, per month that is not reasonable and not supported by the evidence. The text message between the tenant and the landlord's agent clearly show the tenant was asking if they are still required to pay \$1,750.00 for rent for May and June 2020. The landlord responded, "yes that is the amount rent is".

I can see the balance of the text is somewhat confusing; however, this is only related to payments of possible rent subsidy of \$500.00 and the what the tenant said they could afford to pay \$500.00. There is nothing in the text message that leads me to believe the landlord was waiving the rights to the balance of the rent owed. Further, this is also inconsistent with the tenant own evidence as they were paying the landlord \$600.00 per month, and \$300.00 rent subsidy, not \$500.00.

While, I do accept the tenant was having a difficult time due to the state of emergency and losing their employment; however, it was made clear by the provincial government that rent would accumulate as rent arrears and would be the subject of a repayment plan.

Based, on the above, I find the tenant has breached the Act when they failed to pay all rent due. I find the landlord is entitled to recover unpaid rent in the amount of **\$2,950.00**.

I find that the landlord has established a total monetary claim of **\$3,050.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,250.00**.

This order may 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.

Conclusion

The tenant's application is dismissed. The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is 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: December 07, 2020

Residential Tenancy Branch