



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on September 1, 2020 seeking an order to recover monetary loss of unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on December 14, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

Both parties attended the hearing. The landlord provided prepared documentary evidence in advance of the hearing. They also provided two documents on the date of the hearing. In the hearing, the tenant confirmed they were familiar with all documents provided. On this basis I am satisfied the landlord provided these documents to the tenant in preparation for this hearing.

The tenant did not provide documents in advance and confirmed this in the hearing.

On the basis of full disclosure of documents between the parties, the hearing proceeded at the scheduled date and time.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms. The tenant and landlord signed the agreement on May 27, 2019. The tenancy started on July 1, 2019 for a fixed term ending on July 1, 2020. The monthly rent as it appeared on the agreement was \$2,400 per month. The tenant paid a security deposit of \$1,200 on June 1, 2019.

The agreement contains an addendum that both parties signed on May 27, 2019. This provides for the tenant being responsible for cutting the grass, with a \$150 cost incurred if not maintained. Additionally, the addendum contains the clause that provides the tenant is responsible for weeding, and where not “weeded . . . for a period of 30 days then the tenant is responsible for the actual cost of wedding [sic] up to \$200.”

In the hearing the landlord stated the rent amount was \$2,400, then increased to \$2,500 on November 1, 2019. The landlord described this as the situation where “if weeding was done, then there would be a break.” The tenant questioned about this additional \$100 but stated that by “winter it was not getting done, so [they] agreed to the \$100 increase.”

The parties reached a mutual agreement that the tenancy would end on September 2, 2020. This was after the landlord served a ‘10-Day Notice for Unpaid Rent’ to the tenant on September 1, 2020 giving the September 2 end date. The tenant presented how rent became problematic for them because of their employment situation. The parties maintained open discussion of the issues and amounts owing throughout.

The landlord provided a copy of an email dated September 1, 2020 in which the tenant stated:

To confirm, I owe \$2,500/month rent for the months of July, August and September inclusive less my \$1,250 damage/security deposit and 2x\$300 in Covid19 rental assistance payment.
Total owing \$5,650.

The landlord also presented an installment payment arrangement dated September 20, 2020. This is a joint agreement about amounts owing, and sets out terms on amount and interest, a payment schedule, and an option for early payout. The agreement begins: “We agree to a repayment for an outstanding balance of \$6,500 for rent owing minus damage deposit. . .”

This sets out five payments of \$1,400, payable on the 15th day of each month, commencing on October 15, 2020. In the hearing, the landlord stated this includes an interest amount of \$100 for each payment. This is because they were covering the rent amounts from their own line of credit over the duration of rent defaults.

They also set out that, as of the date of the hearing, there as been “nothing paid back.”

In the hearing, the landlord clarified the following amounts:

- rent for each of July, August and September at \$2,500 per month;
- minus \$800 from the security deposit amount of \$1,250, as agreed upon by both parties;
- minus \$600 for “Covid19 rental assistance payment” that the landlord received for each of these months.

This brings the total amount of the landlord’s claim, as amended in the hearing, to \$6,100.

In the hearing, the tenant committed to repayment of amounts owing. They also stated it was not fair for the landlord to bear the cost of rent amounts left unpaid.

Analysis

From the document provided by the landlord I am satisfied that a tenancy agreement was in place. It provides for the specific terms of the rental amount, and the amount of the security deposit paid. For the record, I find these are: \$2,500, as provided for in the landlord’s testimony stating there was an increase in November 2019; and \$1,200 as stated in the agreement.

I find the tenant -- through their testimony and the September 1 email and September 20 repayment agreement – agrees that the amount of monthly rent was \$2,500.

The tenant acknowledged the need for repayment of rent amounts owing. They questioned the one-month rent amount added for September, and reiterated they were not occupying the unit at that time.

The tenant did not pay rent for the month of September. That is to say, they did not make the payment of that rent amount on the first of the month as they agreed upon at the start of the tenancy. This was the reason for the landlord issuing the One-Month Notice. Though the tenant questioned in the hearing whether they are responsible for the rent amount of September when they did not occupy the unit, I find they have already agreed to the amount owing for that month. This is in the email message they sent to the landlord on September 1, and then also factored into the repayment agreement they signed on September 20, 2020.

On this basis, I find the tenant is responsible for paying full rent for each month of July, August and September. They agreed to this amount and did not raise an objection to the full amount in the hearing. This amount total is \$7,500.

The landlord provided that the amount total shall be reduced by \$800. This is the remainder of the \$1,200 security deposit amount to the tenant, which is \$400. The tenant did not raise objection to this or state otherwise in the hearing. This reduces the amount of their claim by the \$800 amount of the security deposit they withheld, to \$6,700. I authorize the landlord to keep this security deposit amount, permitted by section 72(2) of the *Act*.

In the hearing, the landlord stated they received a rental supplement for July and August for \$300 each month. This reduces the amount of their claim further, by \$600, to \$6,100.

Regarding the repayment plan submitted by the landlord, I find it is of no effect going forward. As the landlord stated in the hearing, the tenant made no payment in line with this plan. The landlord acknowledged the plan was out-of-date at the time of the hearing in December 2020.

The repayment agreement signed by the parties on September 20, 2020 added \$100 monthly for the landlord's compensation of interest. This is due to their using their line of credit for rent payments missed by the tenant, to fulfill their own monetary obligations contingent on their receipt of rent from the tenant.

I find the landlord is not entitled to reimbursement of interest amounts. I make this finding for two reasons. One, the landlord provided for this amount in the repayment plan where money owing is being deferred into installments. There is no scheme within the *Act* to account for this. To make a finding that the landlord is entitled to this amount – even with the amount agreed to by the tenant – would amount to an arbitrary payment that is not the obligation of the tenant as per the original tenancy agreement. The repayment agreement between the parties is now void – that includes any agreement the tenant had to repay an interest amount.

Secondly, I cannot award a default amount for that piece of the landlord's claim for reimbursement where there is no evidence to quantify that amount. While it is clear in the landlord's own statement that this is because they used their line of credit for a term in the past; there is no proof thereof, and they have not established that this amount is reflective of an actual line-of-credit interest-bearing account.

For these reasons, I make no award for compensation owing to the landlord from the tenant for interest. My finding here does not preclude the parties from reaching another agreement on some form of repayment together should they wish.

To reiterate, the repayment agreement between the parties is void. The amounts had changed in the interim, as stated by the landlord in the hearing. I grant a monetary order for \$6,100 to the landlord.

As the landlord is successful, I find that the landlord is entitled to recover the \$100 filing fee they paid for their Application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$6,200. The landlord is provided with this Order in the above terms and 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 15, 2020

Residential Tenancy Branch