



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 21, 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 January 12, 2021 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. In the hearing, the tenants confirmed they received this material. On this basis I am satisfied the landlord provided these documents to the tenants.

The tenants 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 tenants and landlord signed the agreement on December 8, 2018.

The tenancy started on February 1, 2019 for a fixed term. The agreement sets out that this fixed term would end on April 30, 2020 at which time the tenants were required to vacate. The reason set out is that the unit is “scheduled for demolition”. This is the ‘vacate clause.’

The monthly rent as it appeared on the agreement was \$1,400 per month. The tenants paid a security deposit of \$700 on December 21, 2018.

The tenancy ended on August 31, 2020. In the hearing, the tenants presented they received a Notice to End Tenancy on June 12, 2020, from an agent of the landlord. This was for the landlord’s demolition of the property as indicated in the original tenancy agreement.

The landlord presented their “Tenant Ledger” to show that the tenants here did not pay rent since April 2020. The ledger shows all transactions and payments from the tenants from January 2019 onwards. The first full month rent payment was on February 1, 2019. Regular monthly payments on the 1st of each continued through to March 2020.

As presented in the ledger, the following amounts unpaid add up to the total amount of balance owing. The landlord’s claim here is for the accumulated total as of the end of August 2020, for \$4,770.50.

month	\$ payment	\$ balance
March 2020	1,400.00	0
April 2020	829.50	570.50
May 2020	0	1,970.50
June 2020	1,400.00	1,970.50
July 2020	0	3,370.50
August 2020	0	4,770.50

The tenants presented that they had the rental unit for international students, and since April were facing lack of payments from this income because of a public health issue

effectively having a large impact. They submitted the landlord decided to continue to rent to them after April 30, 2020.

The tenants submitted they received a Notice to End Tenancy on June 12, 2020; this specified the end-of-tenancy date of August 31, 2020. The tenants submit that because of this document they should be entitled to 2 months of free rent. From another similar scenario in another rental unit they operated, they were aware that ending a tenancy for reason of demolition, or landlord's use, entails two months of free rent. In the hearing, the tenants presented that they "assumed the last 2 months were rent-free in line with the notice to end tenancy for demolition."

The tenants submitted they provided a payment toward rent of \$3,950 "around April 28". This amount was for payments toward each of the three adjacent houses they manage. This \$3,950 amount was part of a larger payment of \$5,990, which added \$1,162.50 to pay for emergency plumbing. They notice the amount of \$829.50 appearing on the ledger for April 30 is not the amount they intended to pay; they wished to cover the whole \$1,400 rent amount for this rental unit from that total amount paid.

The tenants read from, but did not provide, an email they sent to another landlord agent on April 28, 2020. This was to set the portion from the larger payment of \$3,950 for the full amount of rent for this rental unit, \$1,400: "the idea was to pay the full amount of rent." They stated the landlord agent they dealt with directly acknowledged this payment of \$3,950.

In response to this, the landlord agent here stated they were not aware of any other arrangement. They reviewed the tenant's combined three rental units, with the other two being \$1,800/month, and this one here being \$1,400. The percentage between the three properties was applied to the \$3,950 amount tendered and this is what resulted in the \$890.50 payment shown on the ledger.

In response to this, the tenants stated they did not know their payment was being divided up this way between three rental units.

Analysis

The *Act* section 49(6) allows a landlord to end a tenancy if the landlord intends to demolish the rental unit.

The *Act* section 51(1) requires a landlord who gives a notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy. A tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement.

There are no notice or compensation requirements if a fixed term tenancy includes a vacate clause. The reason for the vacate clause in the agreement is clear: that the landlord intends to demolish the rental unit. The tenants each initialled this item in the tenancy agreement; therefore, I find this vacate clause is a valid term in the tenancy agreement and is binding between the parties.

Any agreement that the tenants had with another agent of the landlord is not documented. Similarly, the tenants did not provide any Notice to End Tenancy and without this proof, I find the tenants are not entitled to any amount of compensation from the landlord.

The tenants and landlord agree that the tenancy continued through to August 31, 2020. Minus evidence to the contrary, the tenancy agreement carries through to that final date. The agreement sets the tenant's obligation to pay rent. The *Act* section 26 is firm on this obligation:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *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.

I find there is no proof the tenants had the right to deduct any portion of the rent from the amounts owing. Their testimony on this is not supplemented with evidence of their emails or messages with the other landlord agent, and there is no notice to end tenancy.

The tenants stated they did not know how the landlord divided up their \$3,950 payment at the end of April. This is inconsequential to the landlord's claim for rent amounts owing, and the tenants did not provide proof that they gave instruction to the other landlord agent to pay the full amount of that month's rent from their \$3,950 payment. I find it reasonable for the landlord to divide this payment accordingly, as they would for other full monthly payment amounts for the three units. For this reason, I find it more likely than not that the landlord's ledger correctly presents the rent amounts owing.

In sum, the tenants do not have the right to deduct any portion of the rent, neither under the *Act* or the tenancy agreement. Secondly, I find the amounts as set out by the landlord in the ledger is accurate in terms of the amount owing.

For this reason, I award the landlord the entirety of the claimed amount: \$4,770.50.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$4,770.50. After setting off the security deposit, there is a balance of \$4,070.50. I am authorizing the landlord to keep the security deposit amount and award the balance of \$4,070.500 as compensation for rent amounts owing.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the landlord was successful in their claim, I find they are entitled to recover the filing fee from the tenants.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,170.50. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 *Residential Tenancy Act*.

Dated: February 11, 2021

Residential Tenancy Branch