



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a landlord's application for an Order of Possession for cause and a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open at least 30 minutes.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord's agent submitted that the proceeding package was sent to the tenant at the rental unit address via registered mail on December 17, 2020. The registered mail was not picked up by the tenant and was returned as unclaimed.

The landlord testified that on December 28, 2020 a telephone call was placed to the landlord's after hours emergency line to notify the landlord that the door to the rental unit was wide open. The police were called to attend the rental unit and reported that the rental unit appeared abandoned. The landlord's agent also received a telephone call that same day from an individual who stated her daughter and "son in law" had abandoned the rental unit. The landlord's agent attended the unit and found it full of rats, garbage, and rotting food. The landlord's agent proceeded to change the locks, and remove the rotting food and garbage from the unit. The landlord has continued to store the tenant's furniture. The landlord's agent also left notes on the door of the rental unit in the event the tenant returned to the property to request the tenant contact the landlord. The landlord's agent testified that after changing the locks on December 28, 2020 they have received no contact from the tenant.

The landlord provided photographs of the rental unit and a log of communication to the landlord's after hours emergency line and regular telephone line concerning the rental unit on December 28, 2020 as well as evidence concerning the rat infestation.

In the circumstances described above, the landlord considers the rental unit to be abandoned as of December 28, 2020 and I find the landlord's determination reasonable.

In determining the rental unit was abandoned on December 28, 2020 I find the tenant was deemed to be served with the landlord's Application for Dispute Resolution that was sent to her at the rental unit on December 17, 2020 pursuant to section 90 of the Act.

Where a rental unit is abandoned by a tenant, possession of the rental unit automatically reverts back to the landlord and an Order of Possession is no longer required. I do not provide an Order of Possession to the landlord as abandonment has already occurred and the landlord has regained possession of the rental unit. Accordingly, I find it unnecessary to further consider the validity of the One Month Notice served on October 8, 2020.

The landlord is obligated to deal with the tenant's abandoned furniture in accordance with the abandoned property rules provided under the Residential Tenancy Regulations.

I proceed to determine the landlord's request for recovery of unpaid rent and request to retain the tenant's security deposit.

The landlord requested that I consider amending the landlord's claim to include loss of rent for January 2021 and February 2021; however, the tenant was not put on notice that the landlord would be making such a claim by way of this proceeding. While I have discretion to amend a claim during a hearing under the Rules of Procedure, I decline to amend the application as abandonment was determined effective December 28, 2020 and I find the request to increase the claim to include loss of rent for months after abandonment by way of this proceeding would not be reasonably foreseeable by the tenant. However, the landlord is at liberty to pursue the tenant for loss of rent for months after December 2020, and/or any other damages or loss that resulted from the tenancy, by making another Application for Dispute Resolution if the landlord so chooses.

Issue(s) to be Decided

- Is the landlord entitled to recover unpaid rent for the months of August 2020 through December 2020 from the tenant, as claimed?
- Is the landlord authorized to retain the tenant's security deposit?
- Award of the filing fee.

Background and Evidence

The tenancy started on September 1, 2018 on a month to month basis. The landlord collected a security deposit of \$436.50. The tenant's rent obligation is geared to income pursuant to an operating agreement with BC Housing.

Without a subsidy, the tenant is required to pay rent of \$1132.00 on the first day of every month effective September 1, 2019. Up until July 2020 the tenant qualified for subsidy and the tenant's subsidized rent obligation was \$500.00 per month. Starting August 2020, the tenant lost her subsidy because she did not submit the required documentation as required to determine eligibility.

For the months of August 2020 through December 2020 the Ministry continued to send the landlord \$500.00 per month on behalf of the tenant, leaving a rent shortfall of \$632.00 for each of these months, for a total shortfall \$3160.00. The landlord seeks to recover \$3151.00 from the tenant after taking into account a \$9.00 overpayment in a previous period.

Evidence provided by the landlord for this proceeding included a copy of the tenancy agreement; Notice of Rent Increase; letters to the tenant regarding rent shortfalls; and, rent ledger.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

Upon review of the unopposed evidence before me, including the tenancy agreement, the Notice of Rent Increase and the rent ledger, I find I am satisfied the tenant was

required to pay monthly rent of \$1132.00 after the subsidy was lost for the months of August 2020 onwards and only \$500.00 was received for each of these months. Therefore, I find I am satisfied the landlord is entitled to recovery of \$3151.00 for August 2020 through December 2020 (after taking into account a \$9.00 overpayment from a period period) and I award that amount to the landlord.

I further award the landlord recovery of the \$100.00 filing fee and I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent August 2020 through December 2020	\$3151.00
Filing fee	100.00
Less: security deposit	<u>(436.50)</u>
Monetary Order for landlord	\$2814.50

Conclusion

The tenant has abandoned the rental unit and, with abandonment, possession of the rental unit reverts back to the landlord and an Order of Possession is no longer required. As such, I do not provide one with this decision.

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of unpaid rent up to and including the month of December 2020 in the net amount of \$2814.50.

The landlord is at liberty to seek loss of rent for subsequent months and any other damages or loss that resulted from the tenancy, if any, by way of another Application for Dispute Resolution.

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: March 05, 2021

Residential Tenancy Branch