# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. Although the Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, they stated that they did not receive it until November 1, 2020, as they had moved to a neighbouring community and public health orders prevented them from travelling in order to get it earlier.

The Landlord stated that the Notice of Dispute Resolution Proceeding Package was sent to the Tenant at their forwarding address by registered mail on October 19, 2020, three days after if was sent to them by email by the Residential Tenancy Branch (the Branch) as required, and provided me with the registered mail tracking number. For reference, the registered mail tracking number has been recorded on the cover page of this decision, and the Canada Post tracking website indicates that the registered mail was sent as described above on October 19, 2020, that a notice card was left October 21, 2020, and that the registered mail was successfully delivered on October 25, 2020. A photograph of the envelope containing the mailing address, which is the forwarding address provided to the Landlord by the Tenant, and the tracking number, was provided for my review and consideration by the Landlord.

Based on the above registered mail tracking information, I am satisfied that the registered mail was served, pursuant to sections 88 and 89 of the Act, on October 25, 2020, not November 1, 2020, as stated by the Tenant at the hearing. As I am satisfied that the Landlord complied with the service requirements set out under sections 88, 89, and 59(3) of the Act, and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), the hearing proceeded as scheduled.

As the Tenant acknowledged receipt of the documentary evidence before me from the Landlord as part of the above noted registered mail package, and raised no concerns regarding service or timeline, I also accepted the Landlord's documentary evidence for consideration in these matters. No documentary evidence was served on the Landlord or submitted to the Branch by the Tenant. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address contained in the Application. At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address provided for them in the Application.

Preliminary Matters

Preliminary Matter #1

In their Application the Landlord sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the priority claim relates to rent and that the Landlord's claim for cleaning costs is not sufficiently related to the matter of unpaid rent. Further to this, the Tenant argued that they have documentary evidence regarding the state of the rental unit at the end of the tenancy which is relevant to the Landlord's claim for cleaning costs, that they have not been able to obtain due to current pandemic restrictions on travel.

Based on the above, I exercise my discretion to dismiss the Landlord's claim for cleaning costs with leave to reapply. As a result, the hearing proceeded based only on the Landlord's claims for unpaid rent, recovery of the filing fee, and retention of the security deposit.

Preliminary Matter #2

The Tenant requested an adjournment as they the stated that they were not served with notice of the hearing until November 1, 2020, and have documentary evidence regarding the state of the rental unit at the end of the tenancy which is relevant to the Landlord's claim for cleaning costs, that they have not been able to obtain due to current pandemic restrictions on travel.

As stated above, I have already found that the Tenant was served with the Notice of Dispute Resolution Proceeding Package by registered mail at their current address, on October 25, 2020, not November 1, 2020, as claimed by the Tenant. Further to this, even if I accepted that the Tenant was served on November 1, 2020, which I have not, this date is three months prior to the date and time of the hearing, and as a result, I find that the Tenant had sufficient notice of the hearing.

Having made this finding, I will now turn to the matter of the Tenant's claims that they cannot access relevant evidence due to travel restrictions in place due to the pandemic. Although the Tenant stated that they have documentary evidence that cannot currently be accessed, when I asked the Tenant about the nature and relevance of this evidence, they explained that it related to the Landlord's claim for cleaning costs, a matter I have already dismissed with leave to reapply.

As the Tenant acknowledged that the evidence they cannot access does not relate to either the matter of the Landlord's retention of the security deposit, or the Landlord's claim for unpaid rent, and based on my finding above that the Tenant had sufficient notice of the Application and hearing, I therefore dismissed the Tenant's request for an adjournment as I found that an adjournment was not necessary for the resolution of the matters to be heard and decided by me as a result of the Application or in order for a fair opportunity for either party to be heard, and that there was no prejudice to either party is proceeding with the hearing as scheduled.

The hearing therefore proceeded as scheduled in relation to the Landlord's claims for unpaid rent, recovery of the filing fee, and retention of the security deposit.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain all or some of the Tenant's security deposit and if not, is the Tenant entitled to its return or the return of double its amount?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on September 9, 2019, states that the periodic (month to month) tenancy commenced on October 1, 2019, and that rent in the amount of $1,000.00 is due in advance on or before the first day of each month. The tenancy agreement also states that a $500.00 security deposit was paid.

At the hearing the parties agreed to the following:

- that the terms set out in the written tenancy agreement before me were the correct terms of the tenancy agreement entered into on September 9, 2019;
- that the tenancy ended on September 30, 2020, as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property served pursuant to section 49 of the Act;
- that the tenant provided their forwarding address in writing on September 27, 2020, via the move-out condition inspection report;
- that although a move-in condition inspection was completed, no move-in condition inspection report was completed or provided to the Tenant; and
- that the $500.00 security deposit required in the tenancy agreement was paid, the full amount of which is still held in trust by the Landlord.

The Landlord stated that the Tenant advised them in April of 2020 that they were not working as they had lost their job, and pointed to several emails before me to that affect. The Landlord stated that as they could not afford to pay their mortgage without rental income, they asked the Tenant what portion of their rent they could continue to pay, which was $500.00, and asked them to continue paying this amount of the rent. The Landlord stated that at no time did they ever advise the Tenant that the amount of rent due under the tenancy agreement had changed or that the remaining $500.00 per month owed according to the tenancy agreement was forgiven or waived. The Landlord

stated that there was always an understanding and expectation that these outstanding amounts would still be due, which is supported by the fact that the Tenant subsequently applied for and was approved for the temporary rent subsidy, which the Landlord received in the amount of $300.00 per month for April, May, June, July, and August of 2020. The Landlord stated that $1,012.00 in unpaid rent remains outstanding after the amounts paid by the Tenant and the subsidy amounts received are deducted from the total rent owed between April 1, 2020 – August 31, 2020.

The Tenant disagreed, stating that when they lost their employment in April of 2020, they contacted the Landlord to end the tenancy, and was advised by the Landlord that they were desperate to keep any amount of rent incoming as they could not afford their mortgage without it, and their other Tenant had left without paying rent. The Tenant stated that they negotiated a rent reduction with the Landlord, and that it was agreed that rent would be reduced to $500.00 per month, plus any amount they were approved for via the temporary rent subsidy program. The Tenant stated that there was never any discussion or agreement that the $200.00 difference between the total amount received by the Landlord per month between their rent payment and the subsidy, and the original $1,000.00 in rent due per month under the tenancy agreement, would be due in the future or would continue to be owed. The Tenant stated that it was their understanding that the rent had been reduced from $1,000.00 per month to $500.00 per month, plus whatever they were approved for in terms of a rent subsidy. The Tenant pointed to several emails submitted by the Landlord wherein the Tenant states to the Landlord that this was their understanding of the arrangement.

The Tenant also acknowledged withholding $212.00 from rent in August 2020, as they stated that internet was withheld by the Landlord and was a service provided to them as part of their rent under the tenancy agreement. The Tenant also stated that the Landlord had advised them to get their own internet, which they did, at a cost of $212.00, including a $100.00 installation fee.

The Landlord denied that internet was ever included in the cost of rent under the tenancy agreement, but acknowledged that they had allowed the Tenant to use their Wi-Fi as a courtesy. The Landlord stated that they began experiencing router issues and were having difficulty getting a technician to attend the residence due to the pandemic, at which point they told the Tenant that they were welcome to get their own internet if the situation did not work for them. The Landlord stated that there was never authority for the Tenant to withhold rent for the lack of internet, as it was not a service provided as part of the payment of rent under the tenancy agreement, nor was there any

agreement between themselves and the Tenant that the Landlord would pay for internet the Tenant procured for themselves.

Although the Tenant acknowledged that the provision of internet is not included in the payment of rent in the written tenancy agreement, they stated that there was a subsequent verbal agreement with the Landlord to that affect. The Landlord disagreed, stating that no such verbal agreement existed, that the Tenant was allowed to use their Wi-Fi only as a courtesy, and that the terms of the tenancy agreement are clearly set out in the written tenancy agreement in the documentary evidence before me.

In addition to the $1,012.00 in outstanding rent, the Landlord also sought recovery of the $100.00 filing fee and authority to withhold the Tenant's $500.00 security deposit towards amounts owed.

Analysis

Section 26 (1) of the Act states that 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 the Act to deduct all or a portion of the rent.

At the hearing the parties were agreed that the $3,788.00 in rent was paid between April 1, 2020 – August 31, 2020, as follows:

- April: $500.00 from the Tenant and $300.00 by way of subsidy
- May: $500.00 from the Tenant and $300.00 by way of subsidy
- June: $500.00 from the Tenant and $300.00 by way of subsidy
- July: $500.00 from the Tenant and $300.00 by way of subsidy
- August: $288.00 from the Tenant and $300.00 by way of subsidy

The parties were also agreed that no rent was due for September 2020, as the Tenant was entitled to one month's free rent pursuant to section 51(1) of the Act.

Although the parties were in agreement that only a portion of the rent owed per month in accordance with the written tenancy agreement in the documentary evidence before me was paid between April 1, 2020 – August 31, 2020, they disagreed about why, with the Tenant arguing that rent had been reduced and the Landlord arguing that it had not. For the following reasons, I find that rent remained at $1,000.00 per month, as set out in the written tenancy agreement. The Tenant stated that a verbal agreement with the Landlord had been entered into in April 2020 reducing the rent to $500.00 per month,

plus any subsidy amount approved, however, the Landlord denied that any such agreement existed. Although the Tenant pointed to several emails authored by themselves and submitted for my review by the Landlord, wherein the Tenant stated that it was their understanding that rent had been reduced and why, I am not satisfied that these emails amount to documentary evidence that any such agreement was in fact, agreed to by the Landlord. Instead, I find that these emails are simply self-authored assertions by the Tenant that rent was reduced. In contrast, several emails from the Landlord in response reiterate the Landlord's understanding that no such arrangement or rent reduction was agreed to and that the full amount of rent has always been due.

In the absence of a preponderance of evidence to the contrary, I find that the terms of the written tenancy agreement in the documentary evidence before me stand, and that rent in the amount of $1,000.00 therefore continued to be due on the 1st day of each month. Having made this finding, I will now turn to the matter of the $212.00 withheld by the Tenant in August 2020, due to a loss of internet.

There are only six reasons tenants can withhold rent under the Act:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the Act);
2. When section 33 of the Act in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the Act);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the Act);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the Act); and
6. When the landlord consents to the tenants withholding rent.

In the section of the written tenancy agreement regarding what is included in the payment of rent, there is no indication that internet is included. Although the Tenant argued that there was a verbal agreement to that affect with the Landlord, no proof of such an agreement was submitted, and at the hearing the Landlord denied that any such agreement exists. As a result, I am not satisfied that any such verbal agreement existed, and I therefore find that only the services and facilities set out in the written tenancy agreement are required to be provided by the Landlord to the Tenant. Further to this, even if I had been satisfied that the provision of internet was included in the cost of rent, which I am not, I do not find that the Tenant was entitled to unilaterally withhold any amount of rent for the lack of internet, as they had neither the consent of the

Landlord nor permission from an arbitrator with the Branch, to do so at the time it was withheld.

As the Tenant does not currently have, nor did they have at the time rent was withheld for a lack of internet, the Landlord's consent to withhold rent for this purpose, or a decision from an arbitrator with the Branch allowing them to withhold rent for this purpose, I find that they therefore did not have a right under the Act to do so.

As a result of the above, I am satisfied that $5,000.00 in rent was required to be paid by the Tenant for the period of April 1, 2020 – August 31, 2020. As the parties agreed that only $3,788.00 in rent was paid, and I have found that the Tenant did not have another right under the Act to withhold rent, I therefore find that the Tenant failed to pay $1,212.00 in rent owed between April 1, 2020 – August 31, 2020. However, in the Application, the Landlord sought only $1,012.00 in outstanding rent and did not submit an Amendment to an Application for Dispute Resolution (an Amendment) seeking to increase the amount of their monetary claim.

Although rule 4.2 of the Rules of Procedure allows me to amend an Application for Dispute Resolution without the need for an Amendment in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, I do not find rule 4.2 applies here as the Landlord filed their Application after the end of the tenancy, and therefore no additional rent was owed after the Application was filed. Further to this, I do not find it reasonable to conclude that the Tenant would have been aware, without an Amendment, that the Landlord was intending to seek more than $1,012.00 in outstanding rent at the hearing, and the ability to know the case against you is fundamental to the dispute resolution process.

As a result of the above, I therefore award the Landlord only $1,012.00 in outstanding rent for the period of April 1, 2020 – August 31, 2020.

Although I am satisfied that the Landlord breached section 23 of the Act when they failed to complete and serve on the Tenant, a move-in condition inspection report as required, and that the Landlord therefore extinguished their right to claim against the security deposit for damage pursuant to section 24(2)(c) of the Act, I find that there is no impact on this Application as a result, as the Landlord has sought unpaid rent and recovery of the filing fee, not compensation for damage.

At the hearing the parties agreed that the tenancy ended on September 30, 2020, and that the Tenant provided their forwarding address in writing to the Landlord on September 27, 2020, by way of the move-out condition inspection report. As the Landlord's Application seeking retention of the security deposit for unpaid rent and recovery of the filing fee was filed on October 11, 2020, I therefore find that it was filed on time, in compliance with section 38(1) of the Act, that the Landlord was entitled to withhold the deposit pending the outcome of the Application, and that the doubling provisions of the Act do not apply.

As the Landlord was successful in their Application, I award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I find that the Landlord is also entitled to withhold the Tenant's $500.00 security deposit, in full, towards the above noted amounts owed.

Pursuant to section 67 of the Act, I therefore find that the Landlord is entitled to a Monetary Order in the amount of $612.00; $1,012.00 in outstanding rent, plus $100.00 for recovery of the filing fee, less the $500.00 security deposit retained.

Conclusion

Pursuant to section 72 of the Act, the Landlord is authorized to retain the Tenant's $500.00 security deposit.

Pursuant to section 67 of the Act, I also grant the Landlord a Monetary Order in the amount of **$612.00**. 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.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither my jurisdiction to render this decision nor the validity of this decision and the associated Monetary Order are affected by the fact that they were rendered more than 30 days after the close of the proceedings.

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

Dated: March 17, 2021

Residential Tenancy Branch