



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
 MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on December 15, 2020. The Tenant applied to cancel a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on December 7, 2020, for an order to reduce rent for repairs, services or facilities agreed upon but not provided, for a monetary order for compensation for my monetary loss or other money owed, for an order for repairs to be made to the unit, site or property, and for an order for the landlord to comply with the Act, regulation and/or the tenancy agreement.

The Landlord’s Application for Dispute Resolution was made on December 27, 2020. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on December 7, 2020, for a monetary order for unpaid rent and to recover the filing fee paid for this application.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is also an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice issued on December 7, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord be ordered to comply with the *Act*?
- Should the Landlord be ordered to repair the rental unit?
- Is the Tenant entitled to a reduced rent for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to a monetary order for compensation for my monetary loss or other money owed?
- Is the Landlords entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The tenancy agreement shows that this tenancy began on September 28, 2020, as a one-year fixed term tenancy that would roll into a month-to-month at the end of the initial fixed term. Rent was set at \$1,500.00 per month and was to be paid by the first day of each month. The Landlord testified that they collected a \$750.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they reduced the rent for this tenancy to \$1,450.00 per month, effective November 1, 2020.

The Landlord testified that the Tenant only paid \$1,000.00 in rent for December 2020.

The Landlord testified that they served the Tenant with the Notice to End Tenancy on December 7, 2020, by posting the Notice to the front door of the rental unit, listing an effective date of December 20, 2020, and an outstanding rent amount of \$450.00.

The Landlord testified that the Tenant had not paid the outstanding rent indicated on the Notice and that the Tenant had also not paid the rent for January 2021.

The Landlord testified that the Tenant moved out of the rental unit as of February 3, 2020 and confirmed that they did not require an order of possession for the rental unit.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

Pursuant to section 90 of the Act, I find that the Tenant received the Notice on December 10, 2020, three days after it had been posted to the front door of the rental unit, and that the Tenant did apply to dispute the Notice. This matter was set for hearing by a telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing was the Landlord.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

7.1 The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Therefore, as the Tenants did not attend the hearing by 9:41 a.m., I dismiss the Tenant's application without leave to reapply.

I accept the Landlord's undisputed testimony that the Tenant moved out of the rental unit as of February 3, 2020, and that they no longer required an order of possession for this rental unit.

The only remaining matter before me is the Landlord's request for a monetary order for the outstanding rent for this tenancy, in the amount of \$1,900.00 for December 2020 and January 2021. Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the undisputed testimony of the Landlord that the full rent has not been paid for December 2020 and January 2021.

I have reviewed the documentary evidence submitted to these proceedings by the Tenant, and I find that there is insufficient evidence before me to prove that the Tenant had any reason permitted under the Act, that would have given them the legal right to withhold the rent for this tenancy. Therefore, I find that the Tenant breached section 26 of the Act when they did not pay the rent as required under the tenancy agreement.

Consequently, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,900.00, comprised of \$450.00 in rent for December 2020 and \$1,450.00 in rent for January 2021. I grant permission to the Landlord to retain the \$750.00 security deposit they are holding for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord a monetary order of \$1,250.00, consisting of \$1,900.00 in outstanding rent, \$100.00 in the recovery of the filing fee for this hearing, less the \$750.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,250.00**. 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.

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 12, 2021

Residential Tenancy Branch