



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, FF
For the landlord: OPR, MNR, FF
For the landlord (amended): MND, MNDC

Introduction, Preliminary and Procedural Matters-

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant made an application on December 22, 2020, for the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The landlord made an application seeking relief under the *ex-parte* Direct Request process on January 17, 2021, for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

On or about February 5, 2021, the landlord filed an amended application, seeking additional compensation for alleged damage to the rental unit and other expenses, in an amount in excess of \$35,000.00.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were informed of the expected conduct during the hearing, in particular, that they were not to interrupt the proceedings. The parties were informed that recordings of

the hearings were not allowed and if they were recording, they should turn it off immediately.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and procedural matter #1:

At the beginning of the hearing, I informed the landlord that I would only hear her claim relating to the matter of unpaid monthly rent, not her additional claim for damages, which I severed. The landlord was informed that I find the claim for alleged damages to the rental unit and other matters was unrelated to the primary issue reflected in the original applications of the tenant and the landlord, which was consideration of the merits of the landlord's Notice and unpaid monthly rent.

At this point, the landlord became argumentative and confrontational. The landlord continued during the hearing to argue with me on my decision to sever her application, and made comments about her claim.

The landlord often would not answer my direct questions, being evasive when answering. The landlord was advised to just answer the direct questions and instead, often she would begin giving me statements which best suited her needs, whether or not in relation to the issue being discussed.

The landlord was cautioned many times during the hearing to cease her interruptions, and ultimately, I advised the landlord that she would be placed on mute, if the interruptions continued. I note that I did not place the landlord on mute.

It was clear the landlord was displeased with my decision to sever the part of her application dealing with damages, and her behaviour reflected her unhappiness, as she continued to refer to her other evidence and what she was told by staff at the RTB.

As to my decision to sever, Rule 2.3 of the Rules provides that claims made in the application must be related to each other. The Rule authorizes me to dismiss unrelated disputes contained in a single application.

In this circumstance the landlord initially filed for an order of possession of the rental unit and a monetary order for unpaid monthly rent. That application was made a cross application to the tenant's application seeking cancellation of the Notice.

I determined that the most urgent issue indicated in both applications was consideration of the landlord's Notice and that the landlord's additional monetary claim is not sufficiently related to be determined during this proceeding.

Also, I find this hearing was scheduled in an expedited manner due to the allegation of non-payment of monthly rent, and that a monetary claim for damages is a separate matter that should be scheduled through the standard dispute resolution process and does not justify an expedited hearing.

Section 58(2) of the Act provides that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the *Small Claims Act*.

Tenancy Policy Guideline 27 cites the limit of a monetary claim, other than for claims under section 51(2) or 51.3, is \$35,000.

This Guideline also provides that if a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction.

In this case, the landlord's amended monetary claim exceeds \$35,000. While the landlord submitted that she abandons her claim exceeding \$35,000, the landlord failed to provide which part of her claim she was abandoning.

Further, the landlord's application showed a total monetary claim of \$51,671.34, while the several monetary order worksheets reflected different amounts. When I calculated the amended application claim, my calculations showed \$47,849.26, yet another different amount.

Section 59(2)(b) of the Act requires that an application for dispute resolution include full particulars of the dispute and Rule 2.5 of the Rules states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

As the landlord failed to provide which part of her claim exceeding \$35,000 she was abandoning, I find it would be prejudicial and procedurally unfair to the tenant, as the absence of particulars that set out how the landlord arrived at the amounts being claimed up to \$35,000 makes it difficult, if not impossible, for the tenant to adequately prepare a response to the landlord's claim.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against them at the time the applicant submits their application.

The landlord is granted liberty to reapply for the claims for damages and other monetary compensation not considered in this application, but is reminded to provide full particulars of her monetary claim. This includes providing a separate breakdown of the claim, which matches the claim in the application.

The landlord is also reminded of Rule 3.7, which requires that evidence be organized. Photographs should be described. An example is given as such: "Living room photo 1 and Living room photo 2". I note that the landlord's photographic evidence was numbered, but not labeled or described.

Preliminary and procedural matter #2:

The tenant stated that she received the landlord's amended application, but denied receiving all the evidence in support. The tenant said that the documents she received from the landlord were up to the monetary order worksheet.

The landlord said she delivered her documents by personal service to the tenant.

The landlord denied that she received the tenant's evidence, although the tenant said she delivered it by hand on March 2, 2021.

As the issue remaining was the landlord's request for unpaid monthly rent due under the tenancy agreement, I determined that the hearing could proceed on this issue, despite the parties each denying receiving all the other's evidence.

Preliminary and procedural matter #3:

The parties agreed that since their cross applications have been made, the tenancy has ended. The parties disagreed on the date the tenancy ended.

The tenant submitted that she vacated the rental unit on January 31, 2021, with notice to the landlord.

The landlord said she found out on February 2nd or 3rd in the tenant's lawyer's email that the tenant vacated the rental unit.

Given the above, I find that since the tenancy has ended by the tenant vacating the rental unit, that her entire application is now moot. Therefore, I find it is not necessary to consider this application.

Therefore, I **dismiss** the tenant's application, without leave to reapply. I do not grant the filing fee as a result.

Preliminary and procedural matter #4:

The evidence showed that these parties have been in at least two earlier dispute resolution proceedings.

The landlord submitted a copy of a Decision from another arbitrator, dated January 26, 2021, resulting from a hearing on the tenant's application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord and an order suspending or setting conditions on the landlord's right to enter the rental unit.

That Decision reflected that the tenant was disputing a 10 Day Notice dated November 2, 2020, and an amended application, to dispute a 10 Day Notice issued to the tenant on January 4, 2021.

In that Decision, the other arbitrator wrote that the tenant did not want to pursue her application as she was vacating the rental unit at the end of January 2021.

The other arbitrator offered to give the landlord an order of possession of the rental unit, effective January 31, 2021, and the landlord declined, because she wanted the tenant

to provide a “proper-30-day notice, to provide any outstanding rent and to pay rent for February 2021.” That application number is listed on the style of cause page.

Additionally, the tenant referred to a previous Decision of another arbitrator. The Decision was made on July 31, 2020, based upon the tenant’s application for various matters.

The matter relevant to these applications was another arbitrator’s finding that the landlord overcharged the tenant for her security deposit, in the amount of \$2,750. That arbitrator determined that the amount of \$2,750 was recoverable by the tenant and granted the tenant a monetary award of \$2,750. That application number is listed on the style of cause page.

Issue(s) to be Decided (landlord’s application)

Is the landlord entitled to a monetary order for unpaid rent and to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary and digital evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord’s claim and my findings around it are set out below.

The landlord submitted a written tenancy agreement showing a tenancy agreement start of August 1, 2017, for a fixed term through July 31, 2019, a monthly rent of \$6,500, and a security deposit of \$6,000 being paid by the tenant. As noted above, the tenancy has now ended.

Also filed into evidence were two separate, four page, 22-term addendums to the tenancy agreement.

In the first addendum, the net rent was listed as \$6,500, as shown on the written tenancy agreement. There was language concerning pre-payments of rent, bringing the monthly rent to \$6,000. The addendum also provided that the tenant would “pay a penalty of \$150 for NSF rent cheques to cover the cost of expenses and inconvenience to the Landlord”.

In the second addendum, the “term of the rental renewal agreement is from August 1, 2019 to July 30, 2020”.

There were other terms concerning a right to renew. The monthly rent listed in this addendum was \$6,800, containing similar language concerning pre-payments of rent, bringing the monthly rent to \$6,200.

As to the landlord’s claim for unpaid monthly rent, the landlord’s documentary evidence showed inconsistent claims.

On the Direct Request monetary order worksheet, the landlord submitted that the monthly rent owing was \$7,300 from July 15 through December 2020, and from January and February 2021, each month. This RTB form was not dated.

Also filed into evidence, however, was a separate and handwritten breakdown of the monetary claim for unpaid monthly rent, attached to the addendum, showing the monthly rent obligation for January and February 2021 was \$6,800, each month.

Due to the inconsistent evidence as to what the actual claim amount sought for unpaid monthly rent, I elected to proceed on the claim that monthly rent was \$6,800, as reflected in the landlord’s handwritten breakdown.

That claim for unpaid monthly rent is as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|---|--------------------|
| 1. July 15, 2020 | \$250.00 |
| 2. August -December 2020, <i>\$500 each month</i> | \$2,500.00 |
| 3. January 2021 | \$6,800.00 |
| 4. January 2021 | \$500.00 |
| 5. February 2021 | \$6,800.00 |
| 6. February 2021 | \$500.00 |
| TOTAL | \$17,350.00 |

Landlord’s submissions –

The landlord submitted that the tenant owed an additional \$500 per month, beginning in July 2020, for landscaping. The tenant was obligated to pay this amount by the yard maintenance term, 22, in the second addendum. The landlord submitted that the tenant

did not maintain the yard, as required, triggering the obligation of the tenant to pay this amount.

As to the claim for unpaid monthly rent for January, the landlord said that she did not receive any rent from the tenant until January 25, 2021. This amount was a partial payment of \$4,050.

As to the claim for unpaid monthly rent for February 2021, the landlord submitted that she never received a proper written notice to vacate from the tenant and did not learn that the tenant had vacated until receiving an email from the tenant's lawyer, on February 2nd or 3rd. Filed into evidence was a copy of the email.

The landlord submitted that she suffered a loss of rent revenue for the month of February 2021, due to the insufficient notice from the tenant.

Tenant's response –

The tenant submitted that she was given a monetary award of \$2,750 in a previous dispute resolution hearing for the overpayment on the security deposit, and the landlord has not paid that amount. As the tenancy was ending in January 2021, she elected to deduct \$2,750 from the monthly rent in the final month of the tenancy and paid the landlord the amount of \$4,050.

The tenant submitted that she paid this amount in December 2020, by way of a cheque to the landlord, who informed the tenant that she never received it. The tenant had to put a stop payment on the first cheque and as a result, she did not issue the second cheque to the landlord until her bank matters were corrected.

As to the claim for the monthly rent for February, the tenant said that she gave the landlord a written notice on December 30, 2020, when she dropped it off at the landlord's home. The tenant said her written notice and proof of delivery were included in her evidence.

Landlord's rebuttal–

The landlord denied receiving the tenant's written notice to end the tenancy.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In this case, I find that the tenancy was on a month-to-month basis, after the expiration of the second fixed term on July 30, 2020, as there was no evidence submitted showing another fixed term agreement or addendum.

Lawn maintenance fees –

Section 1 of the Act defines monthly rent as:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;**
- (b) a pet damage deposit;**
- (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;**

I find lawn maintenance is an extra fee mentioned in the second addendum under certain conditions, but is not included as monthly rent, as defined by the Act.

I dismiss the landlord's claims for lawn maintenance, with leave to reapply.

January 2021, unpaid monthly rent –

Under section 19 of the Act, a landlord must not require or accept a security deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy

agreement. If the landlord accepts a security deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent.

The landlord collected a security deposit in excess of ½ of one month's rent payable. That matter was dealt with in another previous dispute resolution hearing.

As the landlord has not paid the monetary award of \$2,750 granted to the tenant by another arbitrator, the tenant was entitled under the Act to deduct that amount from monthly rent. The evidence shows the tenant deducted \$2,750 from the monthly rent of \$6,800 and that she paid the balance owing, or \$4,050, in January 2021.

I therefore find the tenant did not owe the monthly rent for January 2021 and the landlord's claim is dismissed.

Monthly rent loss - February 2021

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenants wanted to end the tenancy by January 31, 2021, the latest day the tenants could provide written notice to end the tenancy was December 31, 2020.

Here, the tenant submitted that she provided her written notice to the landlord on December 30, 2020; however, the landlord denied that she received it.

In the case of disputed testimony and evidence, the party making the submission must provide sufficient additional evidence, on a balance of probabilities. I was not provided independent proof that the tenant had served her written notice, such as could be shown by registered mail receipts or witnesses. Although the tenant said she had a witness for the delivery of documents, that witness was not present to provide testimony.

Without corroborated evidence that the tenant delivered her written notice to the landlord, I find the tenant submitted insufficient proof that she gave proper written notice to end the tenancy to the landlord by December 31, 2020.

I find the evidence shows that the earliest day the landlord learned the tenant was vacating the rental unit at the end of January 2021, was at the dispute resolution

hearing held on January 26, 2021, as reflected in the Decision by another arbitrator. Additionally, the evidence shows that the landlord received an email from the tenant's lawyer confirming that fact in an email in early February 2021.

I therefore find the landlord submitted sufficient evidence that the tenants failed to give a proper written notice that they were vacating, and that the said insufficient notice caused the landlord to suffer a loss of rent revenue for the following month of February 2021. I therefore find the landlord has established a monetary claim of \$6,800.

“Penalty charged for late rent checks” –

As to the landlord's claim for a “penalty” charge of \$150 for NSF cheques, Residential Tenancy Branch Regulation #7(1)(d) allows a maximum administration fee of \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

I find this claim of \$150, or a total \$1,200 for 8 months, is in excess of the amount allowed. Additionally, the Act does not allow for penalty clauses.

As the landlord is in breach of the Regulations, I dismiss her claim for \$1,200.

Filing fee -

As the landlord had some success with her application, I grant the landlord recovery of their filing fee of \$100.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$6,900 under the following terms:

| ITEM | AMOUNT |
|--------------------------------|-------------------|
| 1. Loss of rent, February 2021 | \$6,800.00 |
| 2. Filing fee | \$100.00 |
| TOTAL MONETARY ORDER | \$6,900.00 |

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: March 26, 2021

Residential Tenancy Branch