



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants;
- a monetary order for unpaid rent; and
- recovery of the filing fee.

The landlord, the landlord's legal counsel, the tenants, and the tenants' legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence and all submitted documentary and digital evidence was accepted.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and 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 Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Additionally, the undisputed evidence is that the tenants have vacated the rental unit and the tenant's counsel submitted they moved out on December 31, 2020. As a result, the matter of the order of possession of the rental unit was moot, as the tenancy has ended. The hearing proceeded on the monetary claim of the landlord, and the portion of the landlord's application for the order of possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants for unpaid monthly rent and to recover the cost of the filing fee?

Background and Evidence

The evidence showed a tenancy formed and began on August 1, 2020 and that the tenants did not pay a security deposit to the landlord.

There was no consensus as to the amount of monthly rent owed by the tenants or whether the monthly rent would be paid by way of employment, services performed, or payments.

There was no formal written tenancy agreement between the parties.

I heard from the parties, as follows:

Landlord's submissions –

- There was a verbal tenancy agreement between the company and the tenant TD, for a start date of August 1, 2020.
- The monthly rent was \$700, confirmed in Wechat messages.

- The tenant paid cash for the first month's rent and from September to November 2020, he did not pay rent.
- The tenant acknowledged owing \$2,100 in rent arrears.
- The landlord and tenant were business partners, and when they were no longer business partners, the parties agreed to use some of the tenant's business earnings to pay rent.
- The tenant paid \$1,856.79, owing \$243.21 and these numbers were acknowledged in writing. That amount was later paid off, as shown in their attached evidence.
- The tenant acknowledged in a Wechat message sent on November 3, 2020, that he had not paid rent due to lack of income from the restaurant business.
- The tenant did not pay rent for December 2020 or January 2021, and the tenant owes a total of \$1,400.
- The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 30, 2020.

Included in the filed evidence of the landlord was a copy of the Notice, copies of the Wechat messages, which were in another language, a statement, and a work sheet showing the unpaid monthly rent for December 2020 and January 2021.

Tenant's responsive submissions –

- The parties had an oral agreement that the monthly rent would be \$600.
- The calculations shown in the Wechat message supplied by the tenant does not make sense.
- The parties acknowledged in the Wechat there was to be a set-off of the monthly rent.
- Rent is due at the end of the month, and not the beginning and therefore the landlord was not entitled to the monthly rent prior to the last day in December 2020.
- In December, the landlord and tenant agreed the tenant would pay wages instead of monthly rent.
- The parties had an agreement the tenant, a chef, would pay the wages of the line cook and would not owe the monthly rent for December.

Included in the filed evidence of the tenant were receipts for a wholesale store for purchases made, an English translation of the Wechat messages, which listed amounts for "turnover", wages, profit, investments, deposits, using profits for monthly rent,

employee timesheet, an expense advanced by the tenant, disbursements made by the tenant, and a record of a wage advancement made by the tenant.

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.

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.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 13(1) of the Act requires that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

In this case, I find evidence shows the parties mixed their business relationship with their apparent landlord-tenant relationship. For instance, in a translated Wechat message, the parties discussed purchases, investments, a deposit minus an investment, a refrigerator purchase, and using profit for the rent. I did not find the translation clear that the tenant owed \$700, or \$600, as the tenant claimed, or if rent was due on the first day of each month, or the last day of the month, as the tenant claimed.

I also find the landlord submitted insufficient evidence to rebut the tenant's assertion that the parties had an agreement that monthly rent would be paid in other ways, such as profits, investments, or paying another employee's wages. I find it just as likely as not that the monthly rent was set-off with other disbursements from the tenant.

Due to the lack of a written tenancy agreement and the confusing, inconsistent, and unclear evidence concerning the business dealings between the parties, I find the landlord submitted insufficient evidence to show that the tenant owed the monthly rent of \$700 for December 2020.

I also find the landlord failed to provide evidence that he took reasonable steps to minimize their loss for the January 2021, rent, by making attempts to find a new tenant for that month.

For these reasons, I dismiss the landlord's application for monetary compensation for unpaid rent for December 2020 and January 2021, due to insufficient evidence, without leave to reapply.

I also dismiss the landlord's application for recovery of the cost of the filing fee, without leave to reapply.

The landlord is cautioned that in the future, they should prepare a written tenancy agreement for each tenancy, complying with the standard terms required under the Act.

Conclusion

Due to the landlord's insufficient evidence, I dismiss their monetary claim for unpaid monthly rent and to recover the cost of the filing fee.

The landlord's application for an order of possession of the rental unit is dismissed, as the tenancy ended on December 31, 2020.

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: April 21, 2021

Residential Tenancy Branch