



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNRL, FFL**
 TT: MNDCT, FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

Rule 2.10 of the Residential Tenancy Rules of Procedure grants me the authority to join applications for dispute resolution and hear them together in the interest of ensuring the dispute resolution process will be fair, efficient and consistent.

I was originally scheduled to only hear the landlord’s application but as the parties consented to the matters being combined and as I find that the applications pertain to the same residential property, the remedies sought in each application are similar

issues of a monetary award and the same facts regarding the amount of rent for this tenancy would be considered, I ordered that the matters be combined.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the tenant entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy began in May 2014. The monthly rent at the outset of the tenancy was \$1,500.00. No security deposit was collected for this tenancy. A copy of the tenancy agreement was submitted into evidence.

The tenant submits that they agreed with the landlord to increase the rent to \$1,600.00 as of April, 2017 and they paid that amount thereafter. The tenant now submits that the rental increase was in contravention of the Act as there was no written agreement and seeks a monetary award in the amount of \$4,400.00 for the overpayment throughout the tenancy.

The landlord submits that the parties came to an agreement that the tenant would pay \$100.00 monthly for electrical utilities as the tenant purchased a hot tub in April 2017. The landlord testified that the rent remained \$1,500.00 throughout the course of the tenancy and was never increased. The tenant submitted copies of their returned cheques as evidence of their payment. Many of the cheques indicate in the notes that they are for "Rent & Electric".

The parties agree that the tenant gave written notice to end the tenancy on November 15, 2020. The tenant testified that they were unable to come to an agreement on an appropriate amount of rent payment for December 2020 and subsequently cancelled

the post dated cheque for December's rent. The parties agree that the tenant vacated the rental unit on December 15, 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the monthly rent for this tenancy was \$1,500.00 throughout. I find the landlord's explanation that the additional \$100.00 charge after April 2017 was for electrical utilities to be reasonable and consistent with the documentary evidence. The tenant's own evidence includes multiple cheques which is noted as for "Rent & Electric".

Regardless of whether the additional amount is for utilities or it is a rent increase, the tenant testified that they agreed to the amount and paid it consistently for the remainder of the tenancy. While I accept that the parties did not document the agreement in writing, the tenant's own testimony was that they agreed to pay an additional \$100.00 on a monthly basis. I am satisfied based on the evidence, including the tenant's own testimony, that there was an agreement between the parties to pay an additional \$100.00 monthly.

Where both parties have agreed to the terms of an agreement I find no basis for a monetary award. The tenant's main submission appears to be that the agreement was not documented in writing. While documenting an agreement is good practice, pursuant to section 1 of the *Act* a tenancy agreement includes both written and oral, as well as express or implied agreements. I find no breach of the *Act*, regulations or tenancy agreement on the part of the landlord that would give rise to a monetary award and accordingly dismiss the tenant's application.

A tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice

on a date not earlier than one month after the date the landlord receives the notice, and is the day before the date when rent is payable under the tenancy agreement.

I find that, as the tenant gave notice of their intention to end the tenancy on November 15, 2020 the effective date of the end of tenancy was December 31, 2020. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,500.00 on December 1, 2020. I accept the evidence of the parties that the tenant failed to pay the full rent on that date.

I find the tenant's submissions regarding the landlord's subsequent sale of the property or other conversations between them to be irrelevant to the matter at hand. I find that there was no prior agreement to end the tenancy. I accept the evidence that there were discussions between the parties regarding ending the tenancy, no notice had been issued. I accept that there was no agreement between the parties waiving the landlord's right to the full rent payable under the tenancy agreement.

Accordingly, I find the landlord has established their claim and issue a monetary award in the amount of \$1,500.00 representing unpaid rent for December 2020.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,600.00. 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.

The tenant's application is dismissed in its entirety without leave to reapply.

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 26, 2021

Residential Tenancy Branch