



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$5,700.00; and for a monetary order for damage or compensation for damage under the Act of \$1,200.00, retaining the security deposit for these claims; and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing, but the Tenant had called the Residential Tenancy Branch ("RTB") to request an adjournment, and she was advised of the proper procedure for making such a request. The Tenant submitted a letter dated January 26, 2021 explaining her absence. She said she recently had surgery and would not be calling in to the hearing. She said she would be having a second surgery in the first week of March, and would require several weeks to recover at that time, as well.

The Landlord opposed the adjournment, but ultimately, he agreed to it, based on the conditions I said I would impose on the Tenant. These conditions are as follows:

1. To submit evidence proving that you had surgery in January and March 2021, with dates of surgery, impact of medication and the recovery time to be lucid.
2. Have until March 1, 2021 to submit evidence to the RTB and the Landlord;
3. Explanation for why you failed to submit your evidence to the RTB and serve it on the Landlord in the last three months.

In response to these Orders in the Interim Decision, I find that the Tenant provided the needed information. The Tenant provided her health care information privately to the RTB and not the Landlord. In order to be fair and transparent to both Parties, I considered only the Tenant's health care related submissions in her privately sent evidence, and not anything else related to the proceedings. It is a principle of administrative fairness for both Parties to know and understand everything that is before me for consideration in making my decision in this matter.

The hearing was reconvened on April 26, 2021, and the Tenant and Landlord attended and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2018, with a monthly rent of \$1,200.00, due from the Tenant to the Landlord on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit.

The tenancy ended on October 11, 2020, after the Landlord served the Tenant with an Order of Possession he had received in another RTB decision dated October 5, 2020. The Landlord said that the Tenant has not made any payments toward the rent owing

since the tenancy ended. The Landlord said that he re-rented the unit as of December 1, 2020.

#1 MONETARY ORDER FOR UNPAID RENT → \$5,700.00

In his Application, the Landlord explained the first claim, as follows:

Tenant did not pay \$1200 rent for each month of January, February, March, and October of 2020. She also did not pay \$900 for August 2020. She was provided with a repayment plan starting October 1 of 2020.

In the hearing, the Landlord testified as to the amounts the Tenant paid and the amounts of rent still owing, as set out in the following table. I combined the Landlord's evidence in this regard with the Tenant's spreadsheet with amounts that she says she owes the Landlord. Differences between the two totals include the Tenant not acknowledging rent outstanding for October and November 2019. Further, the Tenant has claimed for only 11 days that she lived in the rental unit in October 2020. These amounts are underlined to emphasize the differences between the Parties' claims.

Date Rent Due	Amount Owing	Amount Received	Date Received	Amount Owing
Oct 1/19	\$1,200.00	\$0.00	n/a	<u>\$1,200.00</u>
Nov/19	\$1,200.00	\$0.00	n/a	<u>\$1,200.00</u>
Dec/19	\$1,200.00	\$1,100.00	Dec 20/19	\$100.00
Jan 1/20	\$1,200.00	\$1,300.00 \$600.00	Jan 3/20 Jan 17/20	(\$700.00)
Feb 1/20	\$1,200.00	\$0.00	n/a	\$1,200.00
March/20	\$1,200.00	\$300.00	March 12/20	\$900.00
April/20	\$1,200.00	\$300.00 \$900.00	April 13/20 April 16/20	\$0.00
May/20	\$1,200.00	\$300.00 \$900.00	May 1/20 May 14/20	\$0.00
June/20	\$1,200.00	\$300.00	June 1/20	\$0.00

		\$900.00	June 12/20	
July/20	\$1,200.00	\$300.00 \$900.00	July 1/20 July 9/20	\$0.00
Aug/20	\$1,200.00	\$300.00	Aug 1/20	\$900.00
Sept/20	\$1,200.00	\$1,200.00	Sept 1/20	\$0.00
Oct/20	\$1,200.00	\$0.00	n/a	<u>\$1,200.00</u>
Nov/20	\$1,200.00	\$0.00	n/a	<u>\$1,200.00</u>
			TOTAL OWING	\$7,200.00

The Landlord said that BC Housing paid \$300.00 for each of April, May, June, July, and August 2020. He said the Tenant owed \$16,800.00 for 14 rental periods and she paid \$9,900.00, with \$6,900.00 left owing. The Landlord said the Tenant subtracted the amount owing for October and November 2020.

The Tenant said:

I have paid made payments toward rents owed, as per his bank statements - a total of \$8,400.00 - and what he was claiming was \$10,925.00, because of the 11 days in October, not the full amount. And since this hearing, I have not paid anything further.

It's close, but not accurate. Going by our bank statements, I cross-checked what I had paid, and I created a spreadsheet on file showing amounts paid are \$8,400.00 and a second column showing what's due, and a third column showing BC Housing's portion. This is including - I don't agree with paying the full month of October. The total payments that I had made were \$8,400.00, and the amount due including 11 days in October was \$10,925.25. I owed \$2525.25, less the \$600.00 security deposit is \$1,925.25

#2 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$1,200.00

In answer to my question as to the basis for this claim against the Tenant, the Landlord said:

This might be re not knowing if I can rent the place for November. When submitted originally, it was in October, and it was up in the air as to whether I

would find a tenant. I found a new tenant for December 1.

The Landlord said he searched for a new tenant by posting advertisements at work and in a nationally known internet site allowing people to post items for sale and rent.

The Landlord said:

I had many go through it, quite a few, but the first one who was qualified and more ideal – I didn't want to have another bad experience - I didn't want to take the first person who came.

The Tenant said in the hearing:

In reference to exactly . . . I don't think this is even relevant, because we had determined through the first dispute hearing that the suite would be vacated on or before October 11. A settled agreement. He knew I was going to be moving out. I confirmed the date and included a daily rate for those days. He should have coordinated someone to move in earlier.

The Landlord said:

So, what she is referring to – it was not a mutual agreement - it referred to that case. Just because we agreed she would leave the premises, she gave me notice on October 2, and put it on the door of the garage, but must give one month's notice. The agreement was so she could leave in peace. We agreed she can leave on that day, so we don't need to call a bailiff. It wasn't a mutual agreement that she can leave and pay until October 11. Read the decision on that file. It's the decision for that case.

The Tenant said:

I don't think he understands what had been resolved at that hearing, so when you're reading the Order from that decision, the tenancy ended, and a free and voluntary settlement was made. I was not responsible for any notice or previous notice. I had been evicted. And all the evidence was in that hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

First, I find that the Settlement from the previous arbitrator's decision dated October 5, 2020, is not relevant to this proceeding, in that the claims involve different issues. The previous decision dealt with the Tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent, which addressed whether the tenancy would continue or not. The last paragraph of the Settlement states:

3. The parties acknowledge their understanding that this settled Decision resolves the matters contained in the tenant's application and that no finding is made on the merits of the said application for dispute resolution or the landlord's Notice.

The previous decision did not address the financial obligations left outstanding from the tenancy. As such, I reject the Tenant's claim that she "...was not responsible for any notice or previous notice. I had been evicted." The Tenant's claim that she had been evicted is inconsistent with the evidence before me that the Tenant gave notice to end the tenancy on October 2, 2020. The Landlord had served the Tenant with the 10 Day Notice on August 14, 2020, and the Tenant applied to cancel this notice on August 18, 2020. A hearing was scheduled for October 5, 2020; however, before that occurred, the Tenant gave the Landlord notice to end the tenancy on October 2, 2020. I find that this turned the hearing from an opportunity to cancel the eviction notice and have the tenancy continue, into a discussion of the details of the end of the tenancy. The matters before me in this proceeding address the Landlord's claim for compensation for unpaid past and future rent. Accordingly, I find the two hearings address different matters.

#1 MONETARY ORDER FOR UNPAID RENT → \$5,700.00

Section 26 of the Act states: "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 this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I find that neither Party provided sufficient evidence to prove their case, as neither Party pointed me to bank statements that they had submitted to support their claim. However, I find the evidence credible and reliable where it is consistent between the Parties as to amounts and dates on which payments were made.

As such, I will be deleting the Landlord's claims for October and November 2019 rent, for lack of sufficient evidence, therefore, I find it appropriate to delete \$2,400.00 from the total rent owing.

Further, the Tenant claimed that she owes the Landlord for only 11 days in October 2020, because she moved out on that day. However, the Tenant did not consider that the Landlord was unable to rent the unit for the remaining days in October, given her insufficient notice to end the tenancy, pursuant to section 45 of the Act; and therefore, I find that the Tenant owes the Landlord for the whole month of October 2020.

Accordingly, the amount will be \$774.75 higher than the Tenant's record of rent owing.

Date Rent Due	Amount Owing	Amount Received	Date Received	Amount Owing
Oct 1/19	\$1,200.00	\$0.00	n/a	\$1,200.00
Nov/19	\$1,200.00	\$0.00	n/a	\$1,200.00
Dec/19	\$1,200.00	\$1,100.00	Dec 20/19	\$100.00
Jan 1/20	\$1,200.00	\$1,300.00 \$600.00	Jan 3/20 Jan 17/20	(\$700.00)
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July/20	\$1,200.00	\$300.00 \$900.00	July 1/20 July 9/20	\$0.00
Aug/20	\$1,200.00	\$300.00	Aug 1/20	\$900.00
Sept/20	\$1,200.00	\$1,200.00	Sept 1/20	\$0.00

Oct/20	\$1,200.00	\$0.00	n/a	\$1,200.00
			TOTAL OWING	\$3,600.00

Based on the evidence before me overall, I find that the Tenant owes the Landlord \$3,600.00 in unpaid rent. As such, I award the Landlord with **\$3,600.00** from the Tenant, pursuant to sections 26 and 67 of the Act.

#2 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$1,200.00

According to section 45(1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Accordingly, by giving notice of the end of the tenancy on October 2, 2020, the effective date for this notice should have been November 30, 2020, not October 31, 2020, and not October 11, 2020.

Section 53(2) of the Act states that if the effective date of the notice given by a tenant is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. As a result, the effective date in this situation is November 30, 2020. Accordingly, I find that the Tenant owes the Landlord rent for November 2020. I, therefore, award the Landlord with **\$1,200.00** for rent owed to him by the Tenant for November 2020, pursuant to sections 45 and 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's \$600.00 security deposit in partial satisfaction of the Landlord's monetary claim.

Further, given the Landlord's success in his Application, I award the Landlord with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

The Landlord is awarded a total of \$4,900.00 from the Tenant. The Landlord is authorized to retain the Tenant's \$600.00 security deposit, and is granted a monetary order of **\$4,300.00** in full satisfaction of the awards.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenant is successful in the amount of \$4,900.00, as the Landlord provided sufficient evidence to establish this amount of his claim. The Landlord is authorized to retain the Tenant's \$600.00 security deposit in partial satisfaction of this award.

The Landlord has been granted a Monetary Order under section 67 for the balance due by the Tenant to the Landlord in the amount of **\$4,300.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 12, 2021

Residential Tenancy Branch