



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on December 22, 2020 seeking an order to recover monetary loss for unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on April 30, 2020 pursuant to s. s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided both attending parties the opportunity to ask questions.

The landlord confirmed they provided notice of this hearing and their prepared evidence to the tenant prior to this hearing. The tenant could not state with certainty whether they received the full package of the landlord’s submissions. Based on this, I informed both parties at the outset that I would address any shortcomings or apparent omissions in the evidence on a case-by-case basis and monitor carefully should the need for further disclosure arise.

Reciprocally, the landlord confirmed they received the prepared evidence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties submitted a copy of the tenancy agreement for this hearing and verified the terms therein. The landlord and an agent representing the tenant signed the agreement on July 13

and 14, 2017. This was for the tenancy starting on August 15, 2017, for a fixed term ending August 15, 2018. The parties completed renewal agreements on a yearly basis via email.

The agreement sets out \$3,500 monthly rent payable on the 15th each month. By the end of the tenancy and the timeframe at issue in this hearing, this amount increased to \$3,570. The agreement shows the tenant paid a security deposit of \$1,750 at the start of the tenancy.

The tenant here is the signing party to the agreement; however, their family members occupied the rental unit as overseas students. An agent who facilitates rental arrangements for overseas patrons attended the hearing and spoke to both the start of the tenancy and the circumstances in which the tenancy ended. They summed up the situation here by stating that, when the tenant had to return to their home country in a public health crisis, "the account was not settled correctly."

The tenancy ended when the tenant informed the agent that the family needed to return to their home country. The tenant provides this was in mid-April after the family made the decision at the beginning of that month. The agent was the tenant's means of contact with the landlord, so the tenant informed the agent and agreed on the method to end the tenancy. This involved leaving personal furnishings behind in the unit when leaving in a hurried fashion. This was because of the agent's role in arranging for foreign students' accommodation; the tenant's understanding was that the agent could readily have other tenants rent the same unit and have use for the furniture left there.

In the hearing, the tenant presented that they informed the agent in April about the pending end of tenancy. The family was able to leave Canada at the end of June, with many cancellations and re-scheduling of flights due to international closed borders. The family returned to their home country on July 9, 2020. They gave the keys to a mutual contact who provided the keys to the agent. By the tenant's accounting, they were responsible for the rental unit to July 9. This was with the understanding that the agent would pay the full month's rent for July 15th – August 15th.

The tenant provided email messages to show the discussions they had with the landlord on rent amounts owing. The landlord also included email messages in their evidence. By July 7, the landlord requested rent for three months, April 15, 2020 to July 15, 2020. This total is \$10,710. The tenant informed the landlord that \$3,800 should have been paid from the agent to the landlord – this was other money owed from the previous year by the agent to the tenant.

By July 18, the landlord requested payment for April 15, 2020 to August 15, 2020 (\$14,280) and subtracted the amount \$3,800 from the amount owing. The figure they provided to the tenant was \$10,480. Adding \$230.83 of utilities owing bring the amount from the landlord's perspective to \$10,710.83.

In response to this, on July 25 the tenant stated: "After July 16th, [the agent] has the key of house." They identified the rent amount owing as: \$9,877, being 2 months at \$3,570, and 23 days to July 9th at \$2,737.

On July 28, the landlord corrected this to be 25 days in July, thus bringing the rent amount owing to \$10,019. Then they subtracted the \$3,800 amount and the security deposit amount of \$1,750. This amount owing from the tenant would be \$4,699. The landlord provided this amount to the tenant, with a detailed calculation thereof, in an email dated July 28.

In their evidence, the tenant provided images of text messages they had from the agent. The date is not shown in the image capture. One message from the agent at 01:38 states: "I will pay for August." Another from 22:29 on the same day states: "I will pay today for August."

On October 15, the landlord contacted the tenant to advise the agent stated to the landlord "[the agent] will only be responsible for the rent after Aug 15." This adds the remainder for July 9 – 15th \$691 and also the following month's rent July 15 – August 15 \$3,570 for a new total of \$8,960. This is the amount claimed by the landlord in their Application on December 22, 2020.

After this, the last message on the record with the tenant is from the landlord dated October 27, 2020, where they informed the tenant that "you should let us know one month before the last date of your rental but you didn't." The landlord also referred to their queries to the Residential Tenancy Branch.

Analysis

I am satisfied from the evidence and testimony of the parties that a tenancy agreement was in place. The document shows the specific terms of the rental amount and the amount of the deposit paid. This was an agreement signed by an agent on the tenant's behalf. From the outset, the agent was aware of all matters between the landlord and tenant and was the primary means of contact for both. This continued through to the end of tenancy.

The *Act* s. 26 requires a tenant to 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 the *Act* to deduct all or a portion of the rent.

Within the evidence, there are no pieces of communication involving all three parties on the same piece of communication. This reflects the difficulty that communication posed to the landlord and the tenant here. There are messages between the tenant-agent and the landlord-tenant, but with a less-than-ideal pattern of communication between all three parties, this led to

confusion on how the tenancy ended. I find the tenant cannot be faulted directly for this. Additionally, there were extraordinary circumstances present for the tenant at the end of this tenancy.

I find the tenant agrees on an amount of rent owing. At the end of July, the parties agreed that the tenant owed \$4,699 in rent amounts. This includes: the April-May, and May-June rent amounts, at \$3,570 each; the portion for June-July 25 days, at \$2,879; the utilities amount owing, at \$280.83. Subtracted from this are: \$3,800 owing from the agent to the tenant; and \$1,750 where the tenant agreed to the landlord keeping the security deposit. I find the tenant agrees to this amount. As they stated in the hearing: "this is my debt".

The tenant's rent payments lapsed towards the end of the tenancy. The parties agree that the tenant's family moved out on July 9th. What *is* at issue is the rent amounts for July-August, normally payable on July 15th and the extra rent amount for 6 days from July 9 to 15th, at \$691. The landlord adds the amounts \$691 and \$3,570 to the \$4,699 for their total claim of \$8,960.

I find as fact that the tenant advised the agent of the end of tenancy in April. As the tenant stated in the hearing, this was 3 months in advance. What information the agent conveyed to the landlord on this is not known. In the hearing, the agent stated they did not convey a formal notice to end tenancy to the landlord in neither April nor May, because "there was no solid information." The agent presented that it was not until July 9th had passed that the agent and the landlord found out. I find the tenant's position on this is tenable – that is to say, the knowledge of an imminent end to the tenancy was within the agent's knowledge and not passed to the landlord. Although a firm date was not stated to the agent, I find significant complications arose because of travel difficulties that continued to multiply, as described by the tenant in the hearing. I find these present extraordinary circumstances. I weigh the imposition from the tenant of a lack of clear end-of-tenancy date against the agent not informing the landlord of the ending tenancy, and I find the tenant is not responsible for rent amounts past July 9th for this reason.

Additionally, I give weight to the direct email exchange between the landlord and tenant dated July 28, 2020. This is direct communication between the parties showing negotiation on the final amount owing, and the landlord's acceptance of that amount.

There is no sufficient evidence beyond this to show the tenant is responsible for any other rent amounts beyond the end-of-tenancy date of July 9th. There is no evidence showing communication between the landlord and agent to show the landlord's rationale for assigning further rent amounts to the tenant. I find advance notice from the tenant to the agent was in place – the tenant is credible on this point. The lack of communication from the agent to the landlord does not place responsibility for the subsequent month after the end of tenancy back with the tenant.

Finally, the evidence from the tenant showing their text message exchanges has the prompt from the tenant: “[The landlord] is asking house rental payment from April to August 15th”. The agent two-part response to this: “I will pay for August” and “I will pay today for August.” The tenant here was specific enough to enquire on rent amounts to the period *ending* on August 15th and the agent answered they would pay for August. My finding is that this is the timeframe from July to August 2020. By my finding, the tenant shall not pay this amount and was not required to pay rent beyond July 9, 2020.

For these reasons, I award the previously agreed-upon amount of rent to the landlord: this is \$4,699.

As the landlord was for the most part successful in their Application, I find they are entitled to recover \$50 of the Application filing fee.

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,749.00. 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 s. 9.1(1) of the *Act*.

Dated: May 13, 2021

Residential Tenancy Branch