



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Anchoron Property Management
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, 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 \$1,750.00, and to recover the \$100.00 cost of his Application filing fee.

The Tenants and an agent for the Landlord, A.A. ("Agent"), appeared at the teleconference hearing 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 Tenants 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 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.

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 Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also 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. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I asked the Parties for the spelling of their names, and the Tenant J.L., said that his name is not ["J."] and that it is ["S."], as set out in the tenancy agreement. Accordingly, I amended the Respondent's name in the Application to be consistent with that in the tenancy agreement, and pursuant to section 64(3)(c) and Rule 4.2.

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 according to the tenancy agreement, the fixed-term tenancy began on March 15, 2020 and ran to September 15, 2020, and then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$2,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit.

The Parties agreed that the tenancy ended when the Tenants moved out of the rental unit on January 15, 2021. They agreed that the Landlord returned the Tenants' security deposit at the end of the tenancy, except for a deduction of approximately \$38.00.

The Tenants explained that they signed the tenancy agreement, because they needed a place to move to, so that they could complete a major renovation of their home. They said they signed the tenancy agreement on March 15, 2021, and they were scheduled to move in the following Saturday, March 21, 2020. In a written submission, the Landlords explained their situation thereafter, as follows:

On March 16, 2020, the day after signing the lease, we were notified by our kids daycare that they would be closing their doors effective immediately. The following day, on March 17th, we were informed by our kid's school that the Ministry of Education announced the suspension of in-class instruction. Without daycare, we were required to take time off work and begin coordinating with our office to work from home.

On March 18, 2020, three days after signing the lease and prior to our scheduled move, the Province of BC declared a State of Emergency and stay at home order. We postponed our move scheduled for the 21st, uncertain of how the closure would impact us and not comfortable to have a moving company touch all our belongings.

On March 20, 2020 we were informed by our general contractor that he would be placing our renovation on hold until further notice due to challenges to coordinate inspections and to coordinate with sub-trades.

At the time we were under the impression that the shutdown would be for a period of two weeks. It became clear after those first two weeks passed that the shutdown would last much longer with no clear end date.

The Tenants said that they moved into the rental unit in June 2020; they acknowledge that they did not pay the Landlord rent for May 2020, which is what he seeks with this Application, less \$250.00 he said he agreed to reduce the rent, given the Tenants' situation.

In the hearing, the Tenants said:

We moved in on June 1. We let the Landlord know we'd be moving back in. We didn't physically move in at the start of June. With the government shut down, our contractor pausing construction, kids at home, other contractual obligations - we did continue to work - but both of us, our income was reduced. Our office let go 10 people immediately, so our workload increased. Home schooling, working 60 hours a week. [The Landlord] doesn't care about or feel it's relevant.

The Landlord said:

He mentioned that he had other contractual obligations, and this was one of them, too. I don't know why they have chosen not to pay the rent. Maybe he thought because he didn't move in that he didn't have to pay. But that's not how leases work. If you sign, you have to abide by the contract.

Also, he never told me how much his wages were reduced. I was prepared to go a little further and reduce the rent [more than \$250.00], but his attitude was that I don't need to pay you.

The Tenants said:

I don't think I ever put forward that I would not negotiate. I was really trying to reach an agreement with [the Landlord]. We didn't feel the \$250.00 break was commensurate to the position we were placed in. We requested whether he would mutually agree to end the lease, but he was not going to contemplate that. We told him well ahead of time that we couldn't pay rent when we didn't occupy the apartment. \$5,000.00 is a lot of money. We were in a tight position. Never did it say in the contract what we should do if the government shut us down. You purchase things, and things change, and they did rather quickly. Had we held off signing a few days, we wouldn't have signed the lease. We were stuck with this agreement, and had no way out of it. We feel we are holding the burden of the pandemic with this.

The Landlord said:

It's just that because of pandemic – we were all affected - that's why I made a small gesture, but because of the attitude that he doesn't owe it. He said I should look for another tenant. You don't find another tenant right away, and if using the pandemic as an excuse, it's almost impossible to find another tenant. The pandemic was no fault of his, but no fault of mine either. He could have gone for the CERB, if his wages were reduced. He said I could go for that, too, but that's not my responsibility. I gave [the Tenant] a 12.5% reduction in his rent. But if his salaries were reduced by more than 12.5%, I am prepared to give another \$250.00 off, so . . . I would have done the same thing at the time, but because he didn't want to negotiate....

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, the Tenants' position that they did not move into the rental unit until June is not relevant to their obligation to pay rent under the Act. The Tenants were bound by their signature in the tenancy agreement.

Section 26 states that a tenant must pay rent when it is due under 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 Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I appreciate that the Tenants were negatively affected by the pandemic given their planned renovation and move to the rental unit; however, the pandemic was not the Landlord's fault, and he had a legal, binding contract with the Tenants. The Landlord offered a 12.5% reduction in May's rent to assist the Tenants; however, they did not think that was sufficient in the circumstances. The Landlord was not obliged by law to provide any relief to the Tenants; however, he has included this deduction in the amount he has claimed in his Application, despite the Tenants' rejection of his offer.

Section 7(1) of the Act states that if a landlord or a tenant does not comply with the Act, regulation or tenancy agreement, the non-compliant party must compensate the other for the damage or loss that results. Section 67 of the Act authorizes me to determine the amount of compensation payable, if any, and to order the non-complying party to pay that compensation.

I find that the Tenants are obliged by the tenancy agreement to pay their rent in full, pursuant to the tenancy agreement. I find that the Tenants owe the Landlord \$1,750.00 in rent for May 2020. I, therefore, award the Landlord with **\$1,750.00** from the Tenants, pursuant to section 67 of the Act.

Given the Landlord's success in his Application, I also award him recovery of the **\$100.00** Application filing fee pursuant to section 72 of the Act. I, therefore, grant the Landlord a Monetary Order from the Tenants for **\$1,850.00**.

Conclusion

The Landlord is successful in his Application, as the Tenants were responsible for honouring the obligations set out in the tenancy agreement they signed, whether they lived in the rental unit or not. The Landlord is awarded \$1,750.00 from the Tenants for rent for May 2020, which includes a deduction the Landlord was willing to make in recognition of the Tenants' difficulties during the pandemic. The Landlord is also awarded recovery of the \$100.00 Application filing fee for this proceeding.

I grant the Landlord a Monetary Order for **\$1,850.00** from the Tenants. This Order must be served on the Tenants 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: June 16, 2021

Residential Tenancy Branch