



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 an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and Procedural Issues

At the outset of the hearing the landlord's agent stated that the tenant vacated the premises on March 31, 2021 and they no longer require an order of possession.

At the conclusion of the hearing. The tenant became argumentative. I had to place the tenant on mute, in order to make my final comments.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy began on August 1, 2020 for a one-year fixed term tenancy that was to expire on July 31, 2021. Rent in the amount of \$2,125.00 was payable on the first of each month. A security deposit of \$1,062.50 was paid by the tenant. The tenancy ended on March 31, 2021.

The landlord's agent testified that the tenant believed they were being stalked, that someone was entering their rental unit and that they were being followed. The agent stated that the tenant did not feel safe. The agent stated that the police attended on multiple occasions; however, there was no evidence at all that anything was occurring, and the tenant was ensured they were safe.

The landlord's agent stated that because the tenant was unhappy they informed the tenant that if they wanted to vacate prior to the expiry of the lease, they would waive the liquidate damages clause. However, they wanted to receive at least thirty days notice to end the tenancy. The landlord read the contents of the email at the hearing.

The landlord's agent testified that they received notice from the tenant in April that they would be vacating on March 31, 2020. The agent stated that the tenant failed to pay rent for March 2021 and the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 18, 2021. The landlord seeks to recover unpaid rent in the amount of \$2,125.00.

The tenant testified that they were laid off from their employment in January 2021 and asked the property manager to reduce their rent to reflect the current market value due to Covid. The tenant stated that they were informed by the landlord that they would review it; however, the landlord did not further respond to their request. The tenant stated they believe they were overpaying rent.

The tenant testified that after two policemen came to their unit at 1:30am on February 4, 2021. The landlord sent them an email the next day saying they could move out without any obligations. The tenant stated that the landlord forced them to move. The tenant confirmed the email the landlord had read previously.

The tenant testified that they were told they did not have to pay rent for March 2021 and that is why they did not pay rent for March 2021.

The landlord's agent responded at no time did they tell the tenant they would waive rent for March 2021.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant claims an overpayment a rent as they believe they were paying over market value. However, once a tenancy agreement has been entered into by the parties the rent stated in the tenancy agreement, is the rent that is required to be paid. There was no requirement for the landlord to reduce the agreed upon rent. I find the tenant was required to pay the rent of \$2,125.00 per month, as stated in their tenancy agreement.

Section **26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

The evidence of the tenant was that they were told if they moved out of the rental unit that they would not have to pay the rent. The evidence of the tenant was that they were force to move out. The evidence of the landlord was that they told the tenant that they would let them out of the fixed term agreement, without claiming the liquidated damages clause.

The tenant's written submission reads in part as follows:

"As soon as they allow me to move out with no obligation. I searched and found a new place and let the property management know I would not pay the last month rent because ..."

[My Emphasis Added]

I find the tenant's written submission does not support their testimony. The written submission of the tenant shows that they were allowed to move out, not forced. It also supports it was the tenant that told the landlord that they would not pay the rent for March 2021.

Further, the tenant listed 6 reasons why they did not pay rent in their written submission. The first two reasons may be grounds to withhold rent as the tenant submits they were overcharged \$350.00 for the past seven months and that the landlord withdrew rent of \$2,250.00. However, this is not supported by the rent ledger filed in evidence. The tenant presented no evidence that they paid any amount over the agreed upon rent of \$2,125.00. Further, the remaining reasons are not grounds to withhold rent.

I find it more likely than not that the tenant withheld rent because they felt they were entitled to do so. A tenant cannot withhold rent unless they have the authority under the Act, such as an order from an Arbitrator.

I find the tenant breached section 26 of the Act, when they failed to pay rent. I find the landlord is entitled to recover unpaid rent for March 2021 in the amount of **\$2,152.00**

I find that the landlord has established a total monetary claim of **\$2,252.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,062.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,162.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order for unpaid rent. The landlord is authorized to keep the security deposit in partial satisfaction of the claim and is granted a formal order for the balance due.

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: July 17, 2021

Residential Tenancy Branch