



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession based on a mutual agreement to end tenancy pursuant to section 55; and
- a monetary order for unpaid rent in the amount of \$5,100 pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:19 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on April 2, 2021. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on April 7, 2021, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$5,100; and
- 3) retain the security deposit in partial satisfaction of the monetary order made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting July 1, 2019. Monthly rent is \$1,950 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$975 which the landlord holds in trust for the tenant.

The landlord testified that, on January 11, 2021, the parties entered into a mutual agreement to end tenancy (Form #RTB-8) wherein the parties agreed to end the tenancy on February 28, 2021. The tenant's boyfriend was also a party to the tenancy agreement, but the landlord testified that he was not a tenant as he was not named on the tenancy agreement. He was a sometimes-occupant.

The landlord testified that the tenant did not vacate the rental unit on February 28, 2021 as required by the agreement. He testified that she ceased communicating with him shortly prior to this date, but that she left all of her possessions in the rental unit. He testified that the tenant's boyfriend still has access to the rental unit and uses it from time to time. He testified that her boyfriend told him that the tenant has ceased communicating with him as well.

The landlord testified that the tenants are \$5,100 in arrears, stemming from unpaid rent which became due between April 1, 2020 and August 1, 2020. The landlord submitted a spreadsheet of the tenant's arrears and partial payments showing the following:

Date	Owed	Paid	Balance
01-Apr-20	\$1,950.00		\$1,950.00
01-May-20	\$1,950.00		\$3,900.00
01-May-20		\$1,000.00	\$2,900.00
01-Jun-20	\$1,950.00		\$4,850.00
05-Jun-20		\$950.00	\$3,900.00
01-Jul-20	\$1,950.00		\$5,850.00
02-Jul-20		\$1,200.00	\$4,650.00
01-Aug-20	\$1,950.00		\$6,600.00
01-Aug-20		\$1,500.00	\$5,100.00
Total	\$9,750.00	\$4,650.00	\$5,100.00

The landlord personally served the tenant with a Repayment Plan (Form #RTB-14) to the tenant on January 10, 2021 (as per August 14, 2020 Order in Council No 475 - COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act (No. 2) Regulation). He submitted a copy of this Repayment Plan into evidence. He testified that, to date, the tenant has not made any payment, or any part of a payment, pursuant to it.

The landlord testified that the tenant has failed to pay other amounts of rent in addition to the amount above, but that he is not seeking an order that she pay those arrears at this time.

Analysis

I accept the undisputed testimony of the landlord, in its entirety. I find that the tenant was obligated to pay \$1,950 in monthly rent, and that she failed to pay the full amount of rent owed between April 1, 2020 and August 1, 2020. I find that she is \$5,100 in arrears for this period. The landlord served a Repayment Plan, as required by the August 14, 2020 Order in Council No 475. The tenant did not make any of the installment payments.

Section 26(1) of the Act requires a tenant to pay rent when it is due. The tenant did not do this and did not make payments in accordance with the Repayment Plan. As such, she must pay the landlord the full amount of arrears.

I find that, on January 11, 2021, the parties entered into a mutual agreement to end the tenancy as of February 28, 2021. I find that, while the tenant may have left prior to this date (her exact date of departure is unclear), she did not provide vacant possession of the rental unit to the landlord, as her boyfriend still accessed the unit after this date and as all of her possessions remained in the rental unit.

Section 44 of the Act, in part, states:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:

[...]

(c) the landlord and tenant agree in writing to end the tenancy;

The parties agreed in writing to end the tenancy on February 28, 2021. I find that this agreement is valid, and that the tenancy ended on February 28, 2021 as a result. Accordingly, I issue the attached order requiring the tenant to provide vacant possession of the rental unit to the landlord within two days of the landlord serving her with a copy of this decision and attached orders.

Pursuant to section 71(1) of the Act, the landlord may serve the tenant with a copy of this decision and attached orders via email to the tenant's email address listed on the cover of this decision. The landlord testified that he used this email address to communicate with the tenant during the tenancy.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 of the Act, I order that the tenant pay the landlord \$4,125, representing the amount of arrears owed (\$5,100) less the amount of the security deposit (\$975).

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlord.

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 16, 2021

Residential Tenancy Branch