



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing dealt with the twice adjourned Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”) for a monetary order for monetary loss or other money owed, for a monetary order for unpaid rent, and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Landlord’s spouse (the “Landlord”), attended the hearing and were reminded that their affirmation of March 18, 2021, carried forward to today's proceedings. The Tenant did not attend these proceedings; as the Notice of hearing Document was served on the Tenant by the Residential Tenancy Branch, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing and was reminded of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

This final hearing decision should be read in conjunction with the Interim decisions dated March 18, 2021, and August 17, 2021.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that the tenancy began on August 1, 2019, as a one-year fixed term tenancy that would have rolled into a month-to-month tenancy at the end of the initial fixed term. That rent in the amount of \$2,300.00 is to be paid by the first day of each month and that the Landlord had been given a \$1,150.00 security deposit at the outset of this tenancy. Both the Landlord and the Tenant submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the Tenant ended their tenancy early, moving out of the rental unit on April 10, 2021. The parties also agreed that the Tenant did not pay the April 2021 rent for this rental unit.

The Landlord testified that they listed the rental unit as available for rent on April 13, 2021 and were able to secure a new renter for the rental unit as of June 1, 2021. The Landlord submitted a copy of the new renter's tenancy agreement into documentary evidence. The Landlord is requesting the unpaid rent for April 2021 and the recovery of their lost rental income for May 2021, in the amount of \$4,600.00.

The Landlord testified that it cost them \$1,417.50 in property management re-rental fees to locate and secure a new renter for the rental unit. The Landlord testified that since the Tenant broke their fixed term tenancy agreement, the Tenant should have to cover the cost for locating and securing a new renter to take over the rental unit. The Landlord submitted a copy of an owner statement into documentary evidence.

The Landlord testified that the Tenant did not pay the utilities as required during their tenancy and that \$896.90 in outstanding gas and hydro bills were left unpaid for this at the end of this tenancy. The Landlord testified that the outstanding bills consist of two hydro bills in the amount of \$475.18 and \$353.92 due for the period between January to April 2021, and four gas bills of \$14.58, \$20.30 \$15.82 and \$17.10 due for the periods between January to April 2021. The Landlord is requesting the recovery of the unpaid

utilities between January to April 2021, in the amount of \$896.90. The Landlord submitted two hydro bills and four gas billing into documentary evidence.

The Landlord testified that they incurred \$1,000.00 worth of strata fines during this tenancy due to the Tenant keeping garbage outside of the rental unit, in breach of the strata rules. The Landlord testified that they provided the Tenant with instruction by text message, that they were to keep their garbage indoors and to only place garbage outside on the set garbage collection day. The Landlord submitted five emails and three letters they received from the strata council into documentary evidence. The Landlord also submitted three text messages, in a foreign language, into documentary evidence.

The Tenant testified that they had to keep the garbage outside as there was a rodent infestation in the rental unit that the Landlord had not dealt with properly. The Tenant testified that they never received a written warning from the Landlord regarding the garbage.

The Landlord was asked when they provided the Tenant with a copy of the Form K starts property rules and a written warning of this breach to the Tenant; the Landlord testified that they texted the Tenant a copy of the form K on January 20, 2021 and provided the Tenant with several text message warning.

The Tenant testified that the Landlord did texted them several times but that the document they received on January 20, 2021 was not clear and that they were unsure what it was about.

Analysis

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

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

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.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for April 2021. I find that the Tenant breached section 26 of the Act when they did not pay the rent as required under the tenancy agreement. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$2,300.00 in the recovery of the unpaid rent for this tenancy.

The Landlord has also claimed \$896.60 in unpaid utilities for this tenancy; I have reviewed the Tenancy agreement signed between these parties and find that the Tenant had agreed to pay for hydro and gas in addition to their monthly rent for this tenancy. I accept the undisputed testimony of the Landlord support by their documentary evidence that \$896.60 in utility bills remained unpaid at the end of this tenancy. I find that the Tenant breached the Act when they did not pay the utilities as required under the tenancy agreement. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$896.60 in the recovery of the unpaid utilities for this tenancy.

Additionally, the Landlord is claiming for \$2,300.00 in lost rental income for May 2021. Section 45(2)(b) of the Act states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

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

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

I accept the agreed-upon testimony of these parties that the Tenant ended their fixed term tenancy early when they moved out on April 10, 2021. I have reviewed the tenancy agreement signed between these parties, and I find that the earliest this tenancy could have ended, in accordance with *Act*, was July 31, 2021. I find that the Tenant breached section 45 of the *Act* when they ended their tenancy before the agreed-upon date in their tenancy agreement.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant’s breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for May 2021, in the amount of \$2,300.00. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant’s breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of rental income for May 2021.

However, I accept the Landlord's testimony that they were able to secure a new renter for this rental unit as of June 1, 2021, at a new monthly rent of \$2,700.00, an increase in rental income of \$400.00 per month. Therefore, I find that the Tenant's breach of the *Act*, although caused a loss of \$2,300.00 in rent for May 2021, also caused an increase in the Landlord's rental income of \$800.00, an extra \$400.00 per month for June and July 2021. As awards for compensation are there to put the affected party in the same position as if the damage or loss had not occurred, I find that I must account for the increased rental income earned by the Landlord in their new rental agreement for the remaining period of this tenancy.

As the remaining term of this fixed term tenancy agreement, May, June, and July 2021 would have earned the Landlord another \$6,900.00 in rental income, and the new rental agreement that started June 1, 2021, earned the Landlord \$5,400.00 in rental income for June and July 2021, I find that the Landlord suffered a loss of \$1,500.00 due to this Tenant's breach of the *Act*. Accordingly, I award the Landlord the recovery of \$1,500.00 in lost rental income for this tenancy.

As for the Landlord's claim for the recovery of \$1,417.50 in property management re-rental fees, I have reviewed the document submitted into evidence by the Landlord to support the value they have claimed for, and I find that this document does not indicate that the amount claimed is a re-rental fee. As I am not able to confirm what services or products this charge was assessed for, I decline to award the Landlord this claim amount for re-rental fees, and I dismiss this portion of the Landlord's claim in its entirety.

The Landlord has also claimed for \$1,000.00 in the recovery of fines they received from the strata during this Tenant's tenancy. I have reviewed the testimony and documentary evidence presented during these proceedings, and I find the Landlord received eight finds due to multiple breaches of the strata property rules, regarding the placement of garbage, between January 15, 2021, to March 27, 2021. However, I noted that at no time did the Landlord served the Tenant with official written notice that they were in breach of their tenancy agreement by not following the strata property rules, nor did the Landlord provide the Tenant with the strata from K, as required.

Several text messages were submitted into documentary evidence; however, no legal translation was provided for these text messages. In the absence of a legally certified translation, I am unable to confirm what was communicated to the Tenant regarding the required way to store garbage on the rental property. However, even if an accrue translation had been provided to these proceedings, a text message does not constitute

a legal written warning of a breach. As the Tenant was not proved with the required written warning by the Landlord for this breach, nor was the Tenant served with a copy of the strata Form K in an approved manner, I must decline to award the Landlord their claimed amount for strata fines for this tenancy, and I dismiss this portion of the Landlord's claim in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$4,796.90, consisting of \$2,300.00 unpaid rent for April 2021, \$1,500.00 in lost rental income, \$896.60 in unpaid utilities and \$100.00 in the recovery of the filing fee for this hearing.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$4,796.60**. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 10, 2021

Residential Tenancy Branch