



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 09, 2021 (the “Application”). The Landlord sought the following:

- To recover unpaid rent
- Reimbursement for the filing fee

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package. The Tenant testified that they did not receive the Landlord’s evidence. The Landlord testified that they did not serve their evidence on the Tenant.

Pursuant to rules 3.1 and 3.14 of the Rules, the Landlord was required to serve their evidence on the Tenant.

Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Landlord’s evidence should be admitted or excluded. The Tenant submitted that the evidence should be excluded and the Landlord submitted that the evidence should be admitted.

Pursuant to rule 3.17 of the Rules, I exclude the evidence as I find it would be unfair to the Tenant to admit evidence that they have not seen and could not respond to.

The Tenant testified that they did not serve their evidence on the Landlord.

Pursuant to rule 3.15 of the Rules, the Tenant was required to serve their evidence on the Landlord.

Pursuant to rule 3.17 of the Rules, I heard the parties on whether the Tenant's evidence should be admitted or excluded. The Landlord submitted that the evidence should be excluded and the Tenant submitted that the evidence should be admitted.

Pursuant to rule 3.17 of the Rules, I exclude the evidence as I find it would be unfair to the Landlord to admit evidence that they have not seen and could not respond to.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided. I will only refer to the evidence I find relevant in this decision.

I note that I had to put the Tenant on mute during the hearing pursuant to rule 6.10 of the Rules because the Tenant continuously went into issues that were not relevant to the issues before me and the Tenant would not listen when I asked them to stop so that we could re-focus on the relevant issues. Further, the Tenant continued to interrupt me when I attempted to explain issues to the Tenant. I did hear fully from the Tenant on the relevant issues before me as I un-muted the Tenant to answer further questions and provide further testimony when necessary.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement between them. The tenancy started February 01, 2020 and was a month-to-month tenancy.

Rent was \$1,250.00 per month due on the first day of each month. The Tenant paid a \$625.00 security deposit and no pet damage deposit.

The parties agreed the Tenant moved out of the rental unit June 04, 2021.

The Landlord testified as follows. They issued the Tenant a One Month Notice to End Tenancy for Cause on May 25, 2021 with an effective date of July 01, 2021. The Tenant moved out of the rental unit June 04, 2021 and left the Landlord a note stating they had left. The Tenant never paid June rent. The Tenant did not have authority under the *Residential Tenancy Act* (the “Act”) to withhold rent. The rental unit was never re-rented because their daughter now occupies it.

The Landlord testified that the note the Tenant left June 04, 2021 included the following. The Tenant’s name. The rental unit address. That the Tenant was moving June 04, 2021. That the Tenant was informing the Landlord they will be moving as of June 04, 2021 and providing their forwarding address. The Tenant agreed this is what the note stated.

The Tenant testified as follows. The Landlord did issue them a One Month Notice to End Tenancy for Cause on May 25, 2021 with an effective date of July 01, 2021. They did move out June 04, 2021 and left a note about this because the Landlord had assaulted them on May 15, 2021 and the police told the Tenant it was no longer safe to live in the rental unit. They never paid June rent.

I reviewed the six reasons under the *Act* that tenants can withhold rent with the Tenant and the Tenant testified that none of the six reasons applied to June rent in this matter.

The Landlord denied that they assaulted the Tenant on May 15, 2021.

Analysis

Section 7(1) of the *Act* states that a party who does not comply with the *Act* or their tenancy agreement must compensate the other party for loss that results.

Section 26 of the *Act* states:

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.

There are only six reasons under the *Act* that a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

This was a month-to-month tenancy. Section 45(1) of the *Act* states:

45 (1) A tenant may end a periodic 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, and

(b) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

There is no issue that the Tenant was required to pay \$1,250.00 for June rent by June 01, 2021 pursuant to the tenancy agreement between the parties because the parties agreed on the terms of the tenancy agreement.

There is no issue that the Tenant did not pay June rent because the parties agreed on this.

I do not find that the Tenant had authority under the *Act* to withhold rent because the Tenant acknowledged they did not.

There is no issue that the Tenant moved out of the rental unit June 04, 2021 because the parties agreed on this. There is no issue that the Tenant left the Landlord a note on June 04, 2021 about moving out that day, and no issue about what the note said, because the parties agreed on these points.

Pursuant to section 45(1) of the *Act*, the Tenant was required to give the Landlord one month's notice ending the tenancy unless section 45(3) of the *Act* applied. I do not find that section 45(3) of the *Act* applied because the Tenant did not give the Landlord written notice of a breach of a material term as required by this section. Based on the testimony of the parties about what the June 04, 2021 note said, I do not find that the note mentioned a breach of a material term. Therefore, the Tenant was required pursuant to section 45(1) of the *Act* to give one month's notice to the Landlord to end the tenancy.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The notice given by the Tenant June 04, 2021 would have been effective July 31, 2021 pursuant to sections 45(1) and 53 of the *Act* and therefore the Tenant remained liable to pay rent up until July 31, 2021.

I find the Tenant breached the *Act* by ending the tenancy in a manner that does not comply with section 45(1) or (3) of the *Act*. I accept that the Landlord lost June rent due to the Tenant's non-compliance because the Tenant was obligated to pay June rent and the parties agreed the Tenant did not do so. I acknowledge that the Landlord was required to mitigate their loss and did not try to re-rent the unit. However, I do not find it reasonable to expect the Landlord to have re-rented the unit for June when the Tenant

moved out June 04, 2021 and this was the first date the Landlord received notice of the Tenant moving out. I find the Landlord is entitled to June rent.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,350.00 and is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued a Monetary Order for \$1,350.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: December 22, 2021

Residential Tenancy Branch