



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Simple Pursuits Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL-S, MNDCL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on June 18, 2021 seeking an order to recover the money for unpaid rent, compensation for damage, and for other money owed. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 13, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference all hearing; the tenant did not attend.

Preliminary Matter – service to the tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with this Notice of Dispute Resolution Proceeding (the “Notice”). This means the Landlord must provide proof that they served that particular document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

Under affirmed oath, the Landlord provided that they had an ongoing communication with the Tenant concerning outstanding amounts owing. This continued after the Tenant moved out from the rental unit on April 11, 2021. The Landlord described in the hearing that they served the Notice for this hearing to the Tenant on July 31, 2021. They had a witness who observed that transaction, and the Tenant signed a document to show they received the Notice on that date.

Given this description in detail, with dates and details of each discussion, I find as fact that the Landlord served the Notice to the Tenant, along with their evidence, on July 31, 2021. I find the descriptive detail adds weight to the Landlord's account on this particular point, so I find on a balance of probabilities that they served the document to the Tenant, along with their prepared evidence.

This is service in a manner complying with s. 89(1)(a) of the *Act*. After reviewing this with the Landlord, I am satisfied the Landlord advised the Tenant of this hearing in due course. The hearing thus proceeded in the Tenant's absence.

Issues to be Decided

- Is the Landlord entitled to a monetary order for recovery of rent, and/or compensation for damage, and/or other money owed, pursuant to s. 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. The Tenant signed the agreement on January 19, 2021, and the Landlord signed on January 18, 2021. This was for the tenancy that started on March 1, 2019. The monthly rent amount was \$1,075, payable on the first of each month. The Tenant paid an initial security deposit of \$537.50. In the hearing, the Landlord specified the Tenant paid for storage at \$10, and parking \$40.

The agreement shows that each time a rent payment is returned for non-payment, or late, the Landlord would charge a service fee of \$25.

The Tenant moved into the rental unit with the Landlord's agreement on February 16, 2021. The Landlord verified in the hearing that the Tenant paid a pro-rated amount for that earlier date. As per the agreement, the Tenant was responsible for utilities for that time they occupied the rental unit. The Landlord's testimony is that the Tenant did not do so until March 1st. The Tenant did not back-date the single utility to February 16, so this amount for one particular utility is claimed by the Landlord here. For this the

Landlord provided an invoice showing the billing period from February 6, 2021 to March 1, 2021, shown as paid. The amount total is \$62.16, so the Landlord made a per-day calculation for 12 days to claim the amount of \$32.38.

The agreement also contains coverage for liquidated damages, should the Tenant end the fixed-term tenancy early, or in breach of the *Act*. This is a set amount of \$1,000, being “an agreed pre-estimate of the Landlord’s costs of re-renting the rental Unit.” The Landlord claims a portion -- \$210 for 7 hours of work associated with the ending of this tenancy – because the Tenant notified the Landlord of the end of tenancy one day in advance, for April 1. The Landlord noted “accounting and admin” and “advertising, vetting, move-in, move out, inspections” associated with finding a new Tenant and closing out this tenancy with the Tenant. In the hearing the Landlord provided that new tenants entered the rental unit for May 1. The Landlord also confirmed their claim was \$210, and not the full \$1,000 amount as set out in the agreement.

The agreement also contains a one-page part addressing the provision of keys. It sets a \$50 replacement for any missing fob, and missing unit keys require a complete lock change at \$100. The Tenant signed this portion of the agreement on February 17, 2021. At the end of the tenancy when the parties met, the Landlord indicated the charges would apply. The Landlord had to change the lock because the Tenant did not hand back all keys given. A notation on the document shows: “Cancelled April 10th @ 6:51 pm, lost 1 key.”

As stated by the Landlord in the hearing, the Tenant moved out from the unit on April 11, 2021. This was after they gave notice to the Landlord on March 30 to end the tenancy the following day. The Tenant informed the Landlord about their inability to pay that following month’s rent because of their job situation. As the Landlord provided in their June 16 written statement accompanying their Application: “Unfortunately, this was not proper notice to move out for April 1st, 2021.”

The Landlord provided a copy of an email from the Tenant dated March 29, 2021. The Tenant queried “What options are there for me to move” and “I won’t be able to pay my rent April 1st and pay my bills for the rest of the month, or have enough to pay rent may 1st.” The Landlord responded the following day: “you would still be responsible for your lease until we find a suitable new tenant.” The Landlord set out an option where the Tenant could sublet for May 1st, end the lease with liquidated damages, or apply for a government subsidy on the question of lost income. The Tenant responded to say they had to “default on [their] rent for April and move out next week.” They requested to make a payment plan to pay for April rent and the other associated expenses.

After this, the Landlord provided the “Acknowledgement of Early End of Tenancy Notice”; a signed copy is in the Landlord’s evidence. The Tenant also completed and signed a “Rent Deferral Agreement” on April 9. This set the reimbursement amount for \$1,125, being the amount of rent plus locker and parking fee. This set the amount of \$200 as separate payments commencing May 15 and set to end on August 31, 2021.

In the hearing, the Landlord listed the following points concerning the Tenant’s repayment:

- the Tenant contacted the Landlord on July 8 and provided \$200 via e-transfer
- the Tenant said they would e-transfer further payments of \$226.22 each, on July 16, 30, and August 13 and 31, in satisfaction of the rent amount still owing
- the Landlord did not receive July payments
- the Landlord emailed to the Tenant on August 6, to confirm documents for this hearing and also asked about the possibility of settling this matter
- the Landlord did not receive a response to this August 6 message to the Tenant.

The Landlord and Tenant met and walked through the rental unit on April 10, as documented in the Condition Inspection Report that the Landlord provided with their Application. This lists the key deposit and fob total of \$150, as well as scratches on the stove top”, at \$50. The Tenant signed the agreement and provided their forwarding address on that document, indicating that they agree to the following total deduction amount of \$200 from their security deposit. The Landlord provided photos of the stovetop scratches with their Application.

The Landlord’s claim on their Application was for the entire \$1,125 April 2021 rent amount. In the hearing, the Landlord referred to the \$25 late payment fee as set in the tenancy agreement, noting three instances of non-payment by the Tenant. These were April 1 for the normal rent, and May 15 and July 1 for the agreed-upon payments for which the Tenant had insufficient funds. This adds \$75 to the Landlord’s claim total.

On their Application, the Landlord claims \$1,567.38 in total for the above listed items. With the addition of \$75, this brings the total claimed to \$1,642.38. Subtracting the \$200 payment from the Tenant on July 8, the Landlord’s amended claim is \$1,442.38.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish **all** of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Landlord provided sufficient evidence to show the Tenant agreed to repayment of the outstanding rent amount. The payment on July 8 of \$200 reduces the amount of rent owing to \$925; therefore, I award this amount to the Landlord as compensation for April 2021 rent. This is based on the Tenant's breach of s. 45 the *Act* and the tenancy agreement when they provided very short notice to the Landlord for ending this tenancy. This is satisfaction of the "Rent Deferral Agreement" that the Tenant signed on April 9, 2021, and with consideration of the Landlord's testimony of their subsequent discussions with the Tenant about repayment.

The Landlord provided sufficient evidence in the form of the key agreement document, and the Condition Inspection Report to show the Tenant agreed to payment for the incidental damage to the stove (\$50), and fob/lock replacement (\$150). I so award these amounts to the Landlord.

I find it reasonable for the Landlord to rely on the tenancy agreement's provision for a fee when payments are missed or late from the Tenant on rent. I grant the Landlord's claim for \$75 for these purposes. This acknowledges the generosity of the Landlord in communicating with the Tenant closely on amounts owing and providing the option of a repayment schedule to the Tenant.

I grant the Landlord \$210 for their claim for liquidated damages. I find the Landlord explained the nature of the work involved in securing a new tenancy for May 2021. They also provided an accurate record of time involved in that task. I find reducing the amount from \$1,000 as provided for in the agreement, to \$210 shows the Landlord mitigating their loss for this breach by the Tenant.

Also, the Landlord showed the Tenant's own obligation for the February 2021 use of the utility for 12 days. The evidence shows the Tenant moved in early and I accept the Landlord's testimony that the account was not adjusted for the Tenant's early entry. This is an amount owed by the Tenant in all fairness to the Landlord. I so award the amount of \$32.38 as claimed by the Landlord.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here established a claim of \$1,442.38. After setting off the \$537.50 security deposit, there is a balance of \$904.88. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$904.88 as compensation for their monetary claim.

Because the landlord was successful in their Application, I grant the reimbursement of the \$100 Application filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,004.88 for compensation set out above and the recovery of the filing fee for this hearing application. I provide the Landlord with this Order in the above terms and they must serve the Tenant with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: January 14, 2022

Residential Tenancy Branch