



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDRL-S, FFL

Introduction

The Landlord applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order for unpaid rent pursuant to s. 67 of the *Act*; and
- Return of their filing fee pursuant to s. 72.

G.D. appeared as agent for the Landlord. A.N. appeared on her own behalf as Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord's agent advises that the Tenant was served with the Notice of Dispute Resolution and their evidence by way of registered mail sent on November 4, 2021. The Tenant acknowledges receiving the registered mail notice but advised that she was unable to attend the post office to retrieve the package as she was diagnosed with COVID-19 and was in isolation. The Tenant does acknowledge receiving the Landlord's application materials by way of email and raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord's application materials based on the Tenant's acknowledged receipt of the same.

The Tenant confirmed that she did not serve responding evidence.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent? If so, in what amount?

2) Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on December 1, 2019.
- The Tenant gave vacant possession of the rental unit to the Landlord on January 19, 2021.
- Rent of \$1,720.00 was due on the first day of each month.
- The Landlord held a security deposit of \$755.00 in trust for the Tenant.

A copy of the written tenancy agreement was put into evidence by the Landlord.

The Landlord provides a rent ledger indicating that the Tenant failed to pay rent as follows:

Month	Rent Due	Rent Paid	Difference
April 2020	\$1,720.00	\$0.00	-\$1,720.00
May 2020	\$1,720.00	\$0.00	-\$1,720.00
June 2020	\$1,720.00	\$0.00	-\$1,720.00
July 2020	\$1,720.00	\$0.00	-\$1,720.00
September 2020	\$1,720.00	\$0.00	-\$1,720.00
January 2021	\$1,720.00	\$0.00	-\$1,720.00
TOTAL			\$10,320.00

The Tenant does not dispute that she failed to pay rent in the amount listed above.

At the hearing, the Landlord's agent mentioned that the Tenant failed to pay rent for the months of August 2020, October 2020, and December 2020, though these amounts do not correspond with the total claim made by the Landlord in their application nor is it reflected in the rent ledger put into evidence.

The Landlord's agent indicates the Landlord and the Tenant entered into a repayment plan in October 2020. I note that the period covered included rent affected by the

COVID-19 Regulations. The Landlord's agent indicates that the Tenant failed to make payments under the repayment plan. The Tenant does not deny that she failed to pay rent pursuant to the repayment plan.

The Landlord's agent indicates that the Landlord and the Tenant entered into another payment plan on January 20, 2021, which was after the tenancy ended. A copy of the plan, which is in the form of a letter signed by the parties, was put into evidence by the Landlord. The Landlord's agent advised that the Tenant was to make \$50.00 payments twice a month for 6-months and in exchange the Landlord would waive their claim for rent in January 2021. The Landlord's agent indicates that the Tenant made one payment of \$50.00 in February 2021 and has made no payments since that time.

The Tenant could not recall the specifics of her understanding of the January 20, 2021 payment plan. However, she did recall the waiver of rent for January 2021 and it was her understanding this was done as the Tenant vacated mid-month. The Tenant did not deny signing the letter of January 20, 2021 and confirmed that the only payment she made on the payment plan was the \$50.00 paid in February 1, 2021 mentioned by the Landlord's agent.

The January 20, 2021 letter further indicated that the Tenant allowed the Landlord to withhold the security deposit of \$755.00 on the rent arrears that were owed. The Tenant confirmed that she consented to the Landlord withholding the security deposit so that it could be applied to the rent she owed to the Landlord.

Analysis

The Landlord seeks an order for unpaid rent and for return of their filing fee.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.

4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, rent was not paid in accordance with the tenancy agreement as acknowledged by the Tenant herself. I find that the Tenant breached her obligation to pay rent as set out in the tenancy agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

The Landlord's agent indicated in her evidence that rent was not paid for the months of August 2020, October 2020, and December 2020. However, the testimony at the hearing does not correspond with the amounts listed in the Landlord's rent ledger and the amounts listed in the repayment plan from October 2020.

Given the discrepancy, I prefer the evidence listed in the rent ledger, which is partially corroborated by the repayment plan from October 2020, over that of the Landlord's agent at the hearing. Further, these months with those listed in the ledger would total \$15,480.00, which does not correspond with the amount claimed in the Landlord's application. I find that the Landlord has not established their claim with respect to the months of August 2020, October 2020, and December 2020 as there is insufficient evidence to justify this. I further find that these amounts were not properly set out in the Landlord's application. This portion of the claim is not allowed.

With respect to rent owed for the month of January 2021, I note that rent is due, in full, on the first day of each month as confirmed by the parties at the hearing. The payment plan of January 20, 2021 specifically states that rent for January 2021 would be forgiven if the payments were made on the payment plan. The parties agree that the payments were not made except for one payment of \$50.00 in February 2021.

The Tenant indicated it was her understanding the rent of January 2021 was forgiven due to it being a partial month. However, that is not what the payment plan of January 20, 2021 says. The Tenant admits that she signed the letter.

I find that the Landlord is entitled to claim the full rent for January 2021, which as mentioned above is due and payable on the first day of the month. The Landlord had

only agreed to forgive rent for January 2021 if the Tenant complied with the payment plan and the Tenant admits that she did not.

The Tenant did not dispute that she failed to pay rent in the total amount of \$10,320.00, which is the amount listed in the ledger and the Landlord's application. Based on the Tenant's admission, I am satisfied that the Landlord has established their claim to unpaid rent for the months set out in the ledger totaling \$10,320.00.

It is further undisputed that the Tenant consented to the Landlord withholding the security deposit of \$755.00, as set out in the letter of January 20, 2021. The Tenant made further payment of \$50.00 in February 2021, as agreed by the parties at the hearing.

Taking the above into account, I find that the Landlord has quantified their monetary claim in the following amount:

Month	Rent Due	Rent Paid	Difference
April 2020	\$1,720.00	\$0.00	-\$1,720.00
May 2020	\$1,720.00	\$0.00	-\$1,720.00
June 2020	\$1,720.00	\$0.00	-\$1,720.00
July 2020	\$1,720.00	\$0.00	-\$1,720.00
September 2020	\$1,720.00	\$0.00	-\$1,720.00
January 2021	\$1,720.00	\$0.00	-\$1,720.00
Total unpaid rent			\$10,320.00
Less the security deposit retained by the Landlord			-\$755.00
Less payment by the Tenant in February 2021			-\$50.00
TOTAL RENT CURRENTLY OWED			\$9,515.00

The Tenant continued to reside within the rental unit until January 19, 2021, thus preventing the Landlord from being able to re-rent the rental unit. The Landlord could not mitigate their damages under the circumstances.

I find that the Landlord has established their monetary claim in the amount of \$9,515.00 and they shall have an order in that amount.

Conclusion

I am satisfied that the Landlord has established their monetary claim in the total amount of \$9,515.00.

As the Landlord was successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Taking the above amounts into account, I order pursuant to s. 67 of the *Act* that the Tenant pay **\$9,615.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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: March 18, 2022

Residential Tenancy Branch