



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

Any evidence that a party wishes to rely on must be provided to the other party. The tenant has not provided any evidentiary material, and the landlord testified that all evidence of the landlord, with the exception evidence filed the day of the hearing, has been provided to the tenant. The tenant advised that the landlord's Monetary Order Worksheet has not been received but all other evidence has been received. The landlord submitted that all of the evidence except evidence provided today was sent to the tenant together. I accept that, and all evidence of the landlord is considered in this Decision, with the exception of evidence provided today.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*,

regulation or tenancy agreement, and more specifically for cleaning costs and removal charges?

Background and Evidence

The landlord's agent testified that the tenant occupied a suite within the rental complex during the tenant's employment as a resident manager. The tenancy started on March 3, 2020 and ended on October 1, 2021. A copy of the tenancy agreement has been provided for this hearing which does not mention the amount of rent due, but rent is payable on the 1st day of each month. No security deposit or pet damage deposit was collected from the tenant. The rental unit is an apartment in a complex containing 77 units.

The landlord further testified that the employment agreement states that full market rent of \$1,740.00 is payable when the tenant is not employed. The tenant was permitted a leave of absence commencing on February 4, 2021 until April 4, 2021, and after that date the tenant would be responsible for market rent which commenced on April 5, 2021. The tenant was allowed 2 months' leave, so rent is covered by the landlord employer for February 4 to April 4, 2021. The landlord claims a pro-rated amount of rent for April 5 to April 30, 2021 as well as full market rent for May through September, 2021.

On May 21, 2021 the landlord sent a demand letter to the tenant for April and May, 2021 rent, and the tenant was offered the Rise Program Reach Impact Support and Elevate (RISE) program to assist, however the tenant must apply and provide information such as bank statements, but the tenant didn't follow through with the application.

The landlord claims \$1,430.14 for April, 2021 rent, as well as \$1,740.00 for each of the months of May, June, July, August and September, 2021.

The landlord also claims \$320.00 for cleaning costs and \$278.25 for removing debris from the rental unit at the end of the tenancy. A move-in condition inspection report was completed at the beginning of the tenancy, and a copy has been provided for this hearing. A move-out condition inspection report was also completed at the end of the tenancy, a copy of which has also been provided, however it contains only a signature of a landlord, not by a tenant. The landlord's agent testified that the tenant did not receive any notice of the move-out condition inspection, and the landlord is not concerned about the damage claim.

The tenant testified that a hearing was held on September 21, 2021 wherein the landlord and tenant had made applications which were joined to be heard together. The resulting Decision states that both applications were dismissed without leave to reapply. The landlord had applied for an Order of Possession and a monetary order for unpaid rent in the amount of \$5,010.14 and recovery of the filing fee. The tenancy agreement and other evidence provided for this hearing is exactly the same as in the September 21, 2021 hearing, except this hearing package contains some photographs. The amount of unpaid rent claimed by the landlord at that time is the same as claimed now, but the previous application did not claim damage or loss.

The tenant further testified that no one contacted the tenant for the move-out condition inspection, and the tenant didn't receive a copy of the report.

The employer's human resources department contacted the tenant to offer an opportunity to end employment and said that the landlord would waive the unpaid rent, but the September 21, 2021 Decision had already dismissed the landlord's application.

Analysis

Firstly, I advised the parties that I would review the Decision of September 21, 2021 because it is important that I do not make any findings of fact or law or make any orders that are contrary to what's already been ordered. I have reviewed the Decision, and it is clear that the landlord had already applied for a monetary order for unpaid rent for April, May and June, 2021 in the same amounts as this hearing.

Res judicata is a doctrine in law preventing re-hearing of matters that have already been adjudicated upon, and I find that the landlord's claim for rent for April, May and June, 2021 has already been adjudicated upon, and was dismissed without leave to reapply. That means the landlord may not apply again, and I dismiss that portion of the landlord's application.

With respect to the landlord's claim for unpaid rent for July, August and September, 2021, the tenancy agreement is blank with respect to the amount of rent that the tenant had agreed to. A tenancy agreement is just that – an agreement, and without the signatures of both parties agreeing to all of the terms, I cannot be satisfied that the tenant agreed to \$1,740.00 per month. The landlord referred to an employment agreement, and a demand letter, however the employment agreement has not been provided for this hearing. A demand letter is not an agreement.

The landlord has not lead any evidence respecting the damage claim.

Considering the evidentiary material, I am not satisfied that the landlord has proved the claim, and I dismiss the application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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: May 31, 2022

Residential Tenancy Branch