



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, FF

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied on December 30, 2021 for a monetary order for unpaid rent, authority to keep the tenant's security deposit to use against a monetary award, and to recover the cost of the filing fee.

The landlord, the tenant, and the tenant's person for support attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue –

The landlord filed evidence which I determined was late evidence. In response, the tenant filed late evidence. The parties were aware of the other's evidence and no objections were raised as to exclusions. I considered all relevant evidence of the parties.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, to keep the tenant's security deposit to partially offset a monetary award, and recovery of the cost of the filing fee?

Background and Evidence

The evidence taken at the hearing was that the tenancy started in 2014 and ended on May 30, 2021. There was no written tenancy agreement filed in evidence by either party. The landlord said his wife handled the tenancy matters until she died 5 years ago.

The tenant paid a security deposit which has not been returned to the tenant. In his application, the landlord stated the security deposit was \$700 and the tenant submitted the security deposit was \$1,200.

The documentary evidence showed that the tenant paid monthly rent of \$1,440, until the period in question referred to later in this Decision.

The landlord's monetary claim is \$12,220, which indicates a rent deficiency of \$940 for 13 months, when the tenant paid \$500 for the monthly rent. The landlord submitted a tenant ledger sheet, showing a rent payment of \$500 from April 2020 through April 2021.

In support of his application, the landlord said that the tenant approached him in March 2020 and asked him to help out on the monthly rent payments, as he, the tenant, became unemployed at the start of Covid. The landlord submitted he agreed, as long as the tenant would stay in the rental unit and look after the landlord's home, as the landlord was away for long periods of time. According to the landlord, the tenant did not stay in the rental unit and therefore, did not watch his house. Therefore, the tenant owes the full amount of rent.

Tenant's response –

The tenant agreed that he missed 13 full rent payments. However, in March 2020, the landlord agreed that the tenant could pay the amount of \$500 as monthly rent during the pandemic. The tenant submitted this conversation was over the phone and that the landlord agreed to \$500. The tenant submitted he was shocked with the landlord's monetary claim and questioned the timing of the application, waiting 20 months to make the claim. The tenant submitted that the landlord's application was in retaliation for the tenant's application against him.

The tenant submitted that in a phone call of April 16, 2021, the landlord reneged on their agreement. The tenant referred to his evidence to support his testimony.

The tenant submitted that the landlord was aware of the rent supplements for Covid relief and questioned why the landlord would not pursue this payment.

The tenant submitted that he was unable to travel due to his impending back surgery and that it was not his obligation to maintain the landlord's property.

In rebuttal, the landlord said that the tenant was only a tenant and asked why would he give the tenant \$12,220.

Evidence at the hearing included references to two other dispute resolution applications between the parties. The tenant filed an application for monetary compensation from the landlord on or about June 15, 2021, and that application was dismissed, with leave to reapply. The evidence shows that the tenant has filed another application for monetary compensation from the landlord, on April 27, 2021. The hearing is set for January 26, 2023. The file numbers are listed on the cover page of this Decision.

Analysis

Based on the relevant oral and written evidence, and on the civil standard of a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting

from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility of the evidence. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

The issue in this case is whether the landlord and tenant had entered into a verbal agreement that the monthly rent would be reduced to \$500 due to the onset of the pandemic. The landlord said that there was no agreement and the tenant said there was.

In the case before me, after a review and consideration of all the relevant evidence, I favoured the evidence of the tenant over the landlord. I make this determination considering the following:

In this case, the landlord's own evidence showed that the tenant made consistent rent payments of \$1,440 from the beginning of the tenancy. The start date of the tenancy was in question. The landlord submitted on his application that the tenancy started on May 1, 2015, but his accounting records show a rent payment on January 2, 2015. I also heard evidence that the tenancy started in 2014.

Additionally, the landlord's evidence showed that from April 2020, through April 2021, the tenant made \$500 payments, until, according to the tenant, the landlord rescinded their oral agreement.

In response to the Covid-19 pandemic, certain Ministerial Orders were put into place, as well as changes to the Regulations and Tenancy Policy Guideline. The obligations of tenants to pay rent were suspended from March 18, 2020 to August 17, 2020. However, on July 30, 2020, the *COVID-19 Regulation* went into effect. This Regulation was made under the Emergency Program Act and set out that the emergency period began on March 18, 2020, and ended on the date on which the last extension of the

declaration of the state of emergency made on March 18, 2020 expires or is cancelled. Under this Regulation, the rent due during this emergency period is known as the “affected rent”.

Section 1.02 of the *COVID-19 Regulation* required that a landlord must give the tenant a repayment plan if the tenant has overdue affected rent and the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan.

In connection with the *COVID-19 Regulation*, Residential Tenancy Policy Guideline 52 was enacted.

Under this Guideline, “affected rent” is defined as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

In this case, there was no evidence that the landlord issued a repayment plan to the tenant, to collect a rent deficiency incurred from March 18, 2020 through August 20, 2020, although he was allowed to do so at that time. Additionally, the tenant’s evidence showed that he was approved for a \$300 rent subsidy, and that papers were forwarded to the landlord from BC Housing to complete in order to receive this extra \$300. This would have reduced any claimed rent deficiency for the period of time from March 2020 through August 17, 2020. There was no evidence that the landlord completed the documents to receive the monthly \$300.

I find it reasonable to conclude that the landlord’s failure to pursue any available option to collect the rent deficiency from March 18, 2020 onwards as noted above shows that it was more likely than not the landlord agreed to reduce the monthly rent to \$500.

Additionally, there was no evidence from the landlord that he attempted to collect a rent deficiency that he is now claiming, such as demand letters or 10 Day Notices to End Tenancy for Unpaid Rent issued to the tenant, until this application made on December 30, 2021.

For the above reasons, I find on a balance of probabilities that the landlord and tenant had an oral agreement that beginning in April 2020, the monthly rent was reduced to \$500 and the landlord’s evidence showed these payments were made. The evidence also shows the landlord attempted to rescind this agreement in April 2021, and the tenant paid \$1,440 in May 2021, the last month of the tenancy.

I find that due to the oral agreement, the landlord is now estopped from collecting the rent deficiency, and as a result, I dismiss his application, without leave to reapply. This includes the landlord's request to recover the filing fee.

As I have dismissed the landlord's application, pursuant to section 62(3) of the Act, I **order** the landlord to return the tenant's security deposit, immediately. There was inconsistent evidence as to the amount paid, with the landlord asserting the amount was \$700 and the tenant asserting the amount was \$1,200. I therefore **order** that the landlord return **\$700** to the tenant. I make no determination as to whether this was the actual amount paid by the tenant, but rather, this is a reflection of the inconsistent evidence provided for this hearing. The security deposit was not the central issue in this application. I note the tenant has an application for dispute resolution set for hearing on January 26, 2022, in which he has requested a return of his security deposit, among other things. The tenant is at liberty to continue to pursue his claim for the security deposit of \$1,200 in that dispute, even if the claim would now be reduced by \$700.

To give effect to this order, I issue the tenant a monetary order (Order) pursuant to section 67 of the Act for the amount \$700, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the Order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$700, immediately, and the tenant is issued a monetary order in the amount of \$700, in the event the landlord does not comply with this order.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 07, 2022

Residential Tenancy Branch