



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STASIS TAB HVAC LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 26, 2022 the Dispute Resolution Package was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On March 09, 2022 the Landlord submitted documents to the Residential Tenancy Branch that relate to service of the Dispute Resolution Package. As service of the Dispute Resolution Package is not in issue, I find that these documents are not necessary.

On March 01, 2022 and September 29, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord as evidence for these proceedings. As these documents were not served to the Landlord as evidence for these proceedings, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or unpaid utilities?

Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenant moved into the rental unit in November of 2020 and that he moved out of the unit on May 07, 2021. The Tenant stated that he moved into the unit on November 24, 2020. The Agent for the Landlord was not certain when the Tenant moved into the unit.

The Agent for the Landlord stated that there was no written tenancy agreement. The Tenant stated that there is no written tenancy agreement, but there is an employment agreement that requires the Landlord to provide him with housing, as he is a “foreign worker”.

The Agent for the Landlord stated that the Tenant verbally agreed to pay monthly rent of \$800.00 and that rent for each month was due at the end of each month. For example, rent for October would be due on October 31, 2022. He stated that the rent was to be paid from the time the Tenant moved into the unit and was not dependant on the Tenant’s work permit being processed.

The Tenant stated that he agreed to pay weekly rent of \$60.00 per month and that he was not required to pay rent until his work permit had been processed. He stated that his work permit was processed on March 26, 2022, at which point he was to begin paying weekly rent of \$60.00. He stated that his rent was to be deducted from his pay cheques.

The Agent for the Landlord stated that he does not know when the Tenant’s work permit was processed.

The Agent for the Landlord stated that rent of \$800.00 was deducted from the Tenant’s pay cheques in December of 2021, January of 2022, February of 2022, and March of

2022. He stated that these pay cheques were issued by a farm in BC which is owned by the Landlord.

The Tenant stated that the Landlord did not pay him for working in December of 2021, January of 2022, February of 2022, and the first three weeks in March of 2022 until after he filed a complaint with the Employment Standards Branch. He stated that the Landlord did pay him for work he performed after March 26, 2022.

The Agent for the Landlord agreed that as a result of a complaint made to Employment Standards Branch, the Landlord entered into a settlement agreement in which the Landlord agreed to pay \$8,614.77 to the Tenant. He does not recall which months the wages covered but the payment included a "rent refund" for rent that was deducted from wages paid to the Tenant.

The Tenant stated that the payment of \$8,614.77 did not include a "rent refund".

The Agent for the Landlord stated that since the \$8,614.77 that the Landlord was ordered to pay to the Tenant included a "rent refund" for rent from December, January, February, and March of 2022, the Landlord is now seeking the \$3,200.00 in rent that was due for those months.

The Agent for the Landlord stated that the Landlord is also seeking pro-rated rent from November of 2022, although he cannot recall the amount of rent being sought.

The Tenant stated that he was not required to pay rent for November, December, January, and February because his work permit had not yet been processed. He stated he was required to pay rent for the period between March 26, 2022 and March 31, 2022, which was deducted from his pay for that period.

The Agent for the Landlord stated that he does not know if rent was deducted from the Tenant's pay in March of 2022.

The Agent for the Landlord stated that the Landlord is also seeking compensation for internet costs, although he cannot recall the amount being sought.

Analysis

The *Residential Tenancy Act (Act)* defines a “tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. On the basis of the undisputed evidence, I find that the Tenant and the Landlord entered into an oral tenancy agreement, which entitled the Tenant to occupy the rental unit on March 26, 2022.

Section 13(1) of the *Act* requires a landlord to prepare in writing every tenancy agreement entered into on or after January 01, 2004. The purpose of this, of course, is so that both parties clearly understand the terms of their agreement.

On the basis of the undisputed evidence, I find that the Landlord did not prepare a written tenancy agreement. Even if the parties entered into an employment contract which refers to the provision of housing, in the absence of viewing that contract I cannot conclude that it constitutes a written tenancy agreement.

When a landlord is seeking compensation for unpaid rent, the landlord bears the burden of proving the amount of rent that is payable under the tenancy agreement. In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof typically fails to meet that burden.

I find that the Landlord has submitted insufficient evidence to establish that rent of \$800.00 was due for December of 2021, January of 2022, February of 2022, and/or March of 2022. I find that the Landlord also failed to establish that pro-rated rent was due for November of 2021, at a daily rate of \$25.80. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a written tenancy agreement, that supports this submission or that refutes the Tenant’s submission that he agreed to pay weekly rent of \$60.00, commencing on the date his work permit was processed, which was March 26, 2022.

As the Landlord has failed to meet the burden of proving that the Tenant was required to pay monthly rent of \$800.00 for any period prior to March 26, 2022, I dismiss the Landlord’s claim to collect rent in that amount.

As the Tenant acknowledged that he was required to pay weekly rent of \$60.00, commencing on March 26, 2022, I find that the Tenant was obliged to pay at least that amount, beginning on March 26, 2022.

As there is insufficient evidence to establish that the Tenant was required to pay any rent prior to March 26, 2022, I dismiss the Landlord's claim for compensation for rent for any time prior to March 26, 2022.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that rent due for March was deducted from his pay cheque. As such, I find that no rent was due for March for the period between March 26, 2022 and March 31, 2022.

As the Landlord has failed to establish that the Tenant was required to pay for internet usage during this tenancy, I dismiss the Landlord's claim for internet costs.

I find that the Landlord has failed to establish the merits of the Application for Dispute Resolution and I dismiss the claim to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, 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 *Act*.

Dated: October 12, 2022

Residential Tenancy Branch