



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The applicants' representative GC (the landlord) and tenant AS (the tenant) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

The landlord affirmed he served the notice of hearing and the evidence (the materials) via regular mail and via email on January 18, 2023.

The tenant confirmed receipt of the materials on January 18, 2023.

The tenant emailed the response evidence on January 19, 2023 at 9:54 AM. The landlord confirmed receipt of the response evidence.

Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Witnesses

The landlord is seeking a monetary order for unpaid rent due on April, May, June, July and August 01, 2020.

The tenant affirmed he paid \$7,700.00 for repairs in 2021 and 2022. The tenant requested to hear from two witnesses to prove that he paid the repairs in 2021 and 2022.

Section 33 of the Act states:

- (1) Emergency repairs means repairs that are:
 - (a)urgent,
 - (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c)made for the purpose of repairing
 - (i)major leaks in pipes or the roof,
 - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii)the primary heating system,
 - (iv)damaged or defective locks that give access to a rental unit,
 - (v)the electrical systems, or
 - (vi)in prescribed circumstances, a rental unit or residential property.
- [...]
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
 - (a)emergency repairs are needed;
 - (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- [...]
- (7)If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Based on the tenant's testimony, I find the witnesses' testimony is not relevant to this application, as a repair paid five months after the unpaid rent is not an urgent or

emergency repair. Section 33(7) of the Act does not apply to the repair the tenant claims that he paid.

Rule of Procedure 3.6 states:

All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution.

The arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant.

I did not authorize the tenant to call the witnesses, per Rule of Procedure 3.6.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on August 15, 2018. Monthly rent is due on the first day of the month. The landlord collected and currently holds a deposit of \$1,050.00. The tenancy agreement was submitted into evidence.

Both parties agreed that rent was \$2,152.00 from September 01, 2019 to August 31, 2020.

The landlord affirmed the tenant did not pay rent due on April, May, June, July and August 01, 2020. The landlord received the rental supplement due to the pandemic and a partial payment of \$200.00. The landlord affirmed the total rental arrears from April to August 2020 are \$7,560.00.

The tenant affirmed he does not recall if he paid the amount claimed by the landlord.

The landlord believes he served the repayment plan using the Residential Tenancy Branch (RTB) form.

The landlord submitted a monetary order worksheet indicating a claim in the amount of \$7,560.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 26(1) of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the uncontested testimony that monthly rent was \$2,152.00 from September 01, 2019 to August 31, 2020.

Based on the landlord's convincing testimony and the monetary order worksheet, I find the tenant did not pay the balance of rent from April to August 2020 in the amount of \$7,560.00.

Per section 26(1) of the Act, I award the landlords unpaid rent in the amount of \$7,560.00 for the balance of unpaid rent from April to August 2020.

I note that the repayment plan established by section 1.03(1)(a) of council order 449, issued on July 30, 2020, does not apply to this matter, as the repayment plan timeframe ended on July 10, 2021 and the landlord submitted this application on May 20, 2022.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a

landlord may be deducted from the deposit held by the landlord. I order the landlords to retain the \$1,050.00 deposit in partial satisfaction of the monetary award.

In summary:

| | |
|------------------------------------|-------------------|
| Unpaid rent (April to August 2020) | \$7,560.00 |
| Filing fee | \$100.00 |
| Subtotal | \$7,660.00 |
| Deposit | \$1,050.00 |
| Monetary award | \$6,610.00 |

Conclusion

Pursuant to sections 26 and 72 of the Act, I authorize the landlords to retain the \$1,050.00 deposit and grant the landlords a monetary order in the amount of \$6,610.00.

The landlords are provided with this order in the above terms and the tenant must be served with this order. Should the tenant fail to comply with this order, this order may be filed in 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: February 03, 2023

Residential Tenancy Branch