



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Parallel 50 Realty and Property Management
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on April 22, 2023 seeking compensation for unpaid rent/damages to the rental unit. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 30, 2023.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding and evidence

The Landlord attended the scheduled hearing; the Tenant did not attend.

At the start of the hearing, I confirmed with the Landlord that they served the Notice of Dispute Resolution Proceeding to the Tenant as required. The Landlord completed a record of service, setting out that they served the document to the Tenant via email to a pre-arranged email address for service. The Landlord provided an Address for Service document setting this out, signed and dated by the Tenant on June 8, 2022. On this basis, I find the Landlord served the Notice of Dispute Resolution Proceeding to the Tenant, as required, on May 7, 2023.

The Landlord provided evidence to the Residential Tenancy Branch on May 29, 2023. The Landlord disclosed evidence to the Tenant, with the exception of two particular invoices they intend to rely on as evidence of expenses to them associated with this tenancy. The Landlord was particular that the Tenant had an up-to-date ledger/balance sheet as of the end of the tenancy.

The Rules of Procedure are very particular about disclosure of evidence to a respondent in a hearing process. That is not less than 14 days prior to the hearing, as per Rule 3.14.

The Landlord in the hearing was certain they did not disclose invoices to the Tenant as evidence. I omit these two pieces from evidence in consider, re-stated in the decision where relevant below.

Based on what the Landlord presented about other evidence they served to the Tenant, that receives consideration where relevant below.

Preliminary Matter – rescheduled hearing

The Residential Tenancy Branch informed the Landlord on May 26, 2023 of the hearing time schedule change from May 29 to May 30. On May 26, the Residential Tenancy Branch contacted the Tenant by telephone, leaving a voicemail to inform them of the schedule change. The Residential Tenancy Branch also sent a rescheduled hearing notice to the Tenant on May 26, 2023 at 3:01pm.

Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord confirmed the basic amount of rent for this tenancy: \$2,200. The Tenant paid a security deposit and pet damage deposit of \$1,100 each. The tenancy started on July 1, 2022 for a fixed one-year term. The Landlord provided a copy of the tenancy agreement in their evidence.

In their affirmed testimony in the hearing, the Landlord set out that the Tenant started having difficulty with rent payments in January 2023. The payments were staggered,

and the Tenant always promised to get caught up. On April 6 the Tenant sent an email to the Landlord stating that they were leaving, adding that they were not going to get caught up with payments for past rent amounts owing.

At that time, the Landlord proposed a payment plan to the Tenant, but the Tenant stated they could not commit to that. From approximately April 8 onward, the Landlord had no communication with the Tenant. The Landlord described attempting to schedule a final condition inspection meeting with the Tenant, via email and by attaching a note to the door of the rental unit. The Tenant did respond to the email to give a date; however, the Tenant did not attend at that time for the meeting.

The Landlord visited to the rental unit around April 10, and noted everything in the unit was removed with the exception of some furniture and patio items. The Landlord concluded that the Tenant had left. The Landlord conducted an inspection meeting on their own and completed a final Condition Inspection Report noting what they observed in the rental unit with the Tenant gone.

The Landlord then organized a cleaning firm to undertake those duties, completed on April 17 to April 19. A handyman visited and performed removal of extra furniture items on April 19. On their Application, the Landlord provided the amount of \$794.75 for the cleaning invoice, and \$141.75 for the handyman's invoice.

The Landlord presented that the Tenant did not pay rent for February, March, and April 2023. The Landlord normally charges a fee for this, as well as an NSF charge; however, the Landlord was not claiming those amounts specifically in their Application. The Landlord seeks \$6,600 for recompense of rent owing. They referred to the ledger they provided in their evidence, showing a printed date of April 19, one that they had previously provided to the Tenant.

Analysis

The *Act* s. 45(2) covers how a tenant may end a fixed-term tenancy. It provides that a date shall not be earlier than one month after a landlord receives such notice, and not earlier than the end-of-tenancy date in the agreement.

I find as fact that the tenancy here was of a fixed-term duration. Here, the Landlord received a notice from the Tenant; however, the Tenant sought to end the tenancy earlier than the end-of-tenancy date in the agreement. This was very short notice from

the Tenant who in effect abandoned the rental unit, without attending a final meeting with the Landlord or returning the key to the Landlord. Legally speaking, the Tenant was obligated to fulfill the tenancy agreement through to the end of its term.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement, whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless a tenant has a right under the *Act* to deduct all or a portion of the rent.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the Landlord's affirmed testimony in the hearing that the Tenant did not pay rent for each successive month of February, March, and April 2023 when they abandoned the rental unit. The Landlord referred to the ledger they provided in evidence, and I accept the Landlord's account that the Tenant received this ledger. I find it more likely than not that the Tenant was aware of the rent amount owing, and did not pay that amount as required. This is shown clearly in the ledger that I find was duplicated and provided to the Tenant previously.

In line with this, I grant the Landlord the full rent amounts owing from February to April 2023. This is \$6,600 as per the agreement and shown in the Landlord's ledger. The Tenant breached s. 26 by not paying the rent as and when required. The Landlord established the value thereof in the hearing.

The Landlord provided amounts for the invoices they paid associated with the handyman's services and cleaning. They acknowledged they did not provide these pieces of evidence to the Tenant. Because it was not disclosed, I give these two

invoices no consideration; therefore, the Landlord cannot prove the value of monetary loss to them. On these particular amounts, I grant the Landlord leave to reapply.

I find the Landlord was successful in this Application; therefore, I grant reimbursement of the Application filing fee. The sum total of the award to the Landlord is \$6,700.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$6,700. After setting off the security deposit amounts of \$2,200 total, there is a balance of \$4,500. I am authorizing the Landlord to keep the security deposit and pet damage deposit amounts and award the balance of \$4,500.

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,500. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: May 31, 2023

Residential Tenancy Branch