



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent and utilities, and outstanding security and pet damage deposits of \$8,208.91; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, A.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on May 13, 2020. He said he sent a second package on July 20, 2020. He provided Canada Post tracking numbers as evidence of service. The Tenant confirmed that she had received the first package, but not the second. I asked the Agent to advise us of what was contained in the second package, and I asked the Tenant if she would like to adjourn the hearing to have a chance to receive and review the second package of evidentiary submissions. However, the Tenant said that she and the Agent were working on a payment plan for the outstanding payments owed to the Landlord, and that she was aware of the documents in the second registered mail package. Based on this

discussion, we proceeded with the hearing.

The Parties provided their email addresses in the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The Agent said that he has revised the amount of rent owing now, versus that owing at the time of the Application. He said that it is now \$8,200.00, rather than \$6,200.00 when the Application was served, as the Tenant continued to not pay any rent in June and July 2020. The Agent requested that the Landlord's Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, therefore, she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$6,200.00 to \$8,200.00.

Pursuant to the same Rules, I amend the name of the Applicant in the Application and in this Decision and Order to reflect the correct legal name of the this Party, as advised by the Agent in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on March 15, 2020, running to March 31, 2021. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$2,600.00, due on the first day of each month. The Parties disagreed as to whether the Tenant had paid the Landlord a security deposit of

\$1,300.00, and a pet damage deposit of \$1,300.00. The Tenant said that she provided these funds to the Landlord in March 2020; however, the Agent said that the funds were not allocated to the deposit trust account, but to rent owing at the time of these payments.

The Agent submitted a monetary order worksheet that sets out the amounts he said were owing by the Tenant to the Landlord, as follows:

	Receipt/Estimate From	For	Amount
1	Landlord	April rent outstanding	\$1,000.00
2	Landlord	June rent outstanding	\$2,300.00
3	Landlord	July rent outstanding	\$2,300.00
4	Landlord	Deposits not paid	\$2,600.00
		Total monetary order claim	\$8,200.00

The Agent said that on behalf of the owner and the Landlord, the Agent seeks recovery of unpaid rent from the Tenant, as set out in the above monetary order worksheet. The Agent said that while the rent for May has been paid, the Tenant has not paid the full security or pet damage deposits of \$1,300.00 each. The Agent said that the Tenant's subsequent cheque for the security deposit was cancelled due to insufficient funds. The Agent said that the Tenant refused to pay the \$1,300.00 pet damage deposit, as well.

The Agent also said that he is claiming for unpaid rent in August 2020, for a total of \$10,800.00, although; however, I advised the Parties that the Landlord cannot apply to recover rent that is not yet owing. In addition, the Agent said that the Tenant owes \$8.91 in unpaid utilities for the period of February 24 to March 24, 2020.

The Tenant said that she paid the following to the Landlord in rent:

- \$2,600.00 in March, as she paid \$1,300.00 twice;
- \$1,300.00 in April, as she still owes \$1,000.00
- \$2,300.00 in May (the Tenant said she receives a \$300.00 rent subsidy from the government).

The Tenant said that June and July 2020 rent are still owing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. I find that the Parties agree as to the rent owing in the amount of \$8,200.00. Pursuant to sections 26 and 67 of the Act, I grant the Landlord a monetary award of **\$8,200.00** from the Tenant in unpaid rent, security and pet damage deposits, as of July 30, 2020.

The Agent did not direct me to a letter from the Landlord alerting the Tenant to the outstanding utilities owed by the Tenant to the Landlord. Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than 30 days after receipt of the written demand. As such, I dismiss this claim with leave to reapply.

Given the Landlord's mostly successful Application, I also award the Landlord with recovery of the **\$100.00** Application filing fee for a total monetary order of **\$8,300.00**.

However, the rent owing is “affected rent” pursuant to the Covid-19 (*Residential Tenancy Act and Manufactured Home Park Tenancy Act*) (No. 2) Regulation (“C19 Tenancy Regulation”). “Affected rent” means “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.”

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan, if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. Please also note that unless a landlord has given a tenant a valid repayment plan for unpaid affected rent, or there is a valid prior agreement relating to the affected rent, the landlord cannot legally end the tenancy on the basis of that unpaid rent. However, if a tenant fails to pay one or more installments as required by a valid repayment plan or valid prior agreement, the landlord may end the tenancy by giving the tenant a 10 Day Notice to End the Tenancy for Unpaid Rent.

While I have awarded the Landlord a monetary order for unpaid affected rent and the deposits, in accordance with the C19 Tenancy Regulation, the Landlord is still required to give the tenant a repayment plan for the amount of unpaid rent when the state of emergency is lifted.

Although the Landlord has been granted a Monetary Order for unpaid affected rent, in accordance with the C19 Tenancy Regulation, the Landlord is still required to give the Tenant a repayment plan for that amount when the state of emergency is lifted.

Conclusion

The Landlord is successful in their Application for a monetary award for unpaid rent and deposits from the Tenant in the amount of \$8,200.00. The Landlord is also awarded recovery of the \$100.00 Application filing fee for a total monetary order of **\$8,300.00** from the Tenant.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court. This Order must be read in combination with this Decision, as the Landlord is required by the C19 Tenancy Regulation to give the Tenant a repayment plan for that amount, pursuant to the stipulations in the C19 Tenancy Regulation.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 8, 2020

Residential Tenancy Branch