



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Loon Properties (1108 Pendrell)
and [tenant name suppressed to protect privacy]

DECISION MNR-S, FF

Dispute Codes

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agents (agents) and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all 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.

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

Preliminary and Procedural Matters-

The landlord submitted some evidence with their application and additional evidence, which was received by the Residential Tenancy Branch (RTB) on September 23, 2020. In response to my inquiry, the tenant said she did not receive the landlord's evidence

until two days prior to the hearing, resulting in her inability to submit responsive evidence. I informed the tenant that I would consider whether to adjourn this hearing at the end of the testimony, in case she would like to submit evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit and pet damage deposit in partial satisfaction of a monetary award?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

A written tenancy agreement was submitted showing a tenancy start date of November 1, 2019, a fixed term through October 31, 2020, monthly rent of \$1,895, due on the 1st day of the month, and a security deposit of \$947.50 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The evidence at the hearing indicated that the tenant paid a pet damage deposit of \$947.50.

The landlord retained the tenant's security deposit and pet damage deposit, having made this claim against them.

The landlord's agent, MP, submitted that the tenant failed to pay the full amount of monthly rent for April and May, and no rent for June or July. Additionally, MP submitted that the tenant provided insufficient and late notice that she was ending the tenancy prior to the end of the fixed term.

MP submitted that the tenant provided a verbal notice sometime in mid-July that she was leaving at the end of July 2020. MP said that they requested she put her notice to end the tenancy in writing.

When attempting to explain how the landlord arrived at the latest claim of \$6,740.00, MP said that the landlord had already applied the tenant's security deposit and pet damage deposit towards their entire claim.

Landlord's agent, ZS, testified that the tenant said she might be moving, but was not certain of anything. ZS said that he informed the tenant her notice would have to be in writing.

Landlord's documentary evidence –

The landlord's application showed a monetary claim of \$4,685.00. The landlord wrote in their application that the tenant paid \$1,000 towards April 2020 rent and did not pay May or June 2020 rent.

Other evidence:

A monetary order worksheet submitted with their application on June 9, 2020, showing a total monetary claim of **\$4,685.00**, comprised of partial rent owing for April for \$895.00 and unpaid rent of \$1,895.00 for May and June 2020, each.

A second monetary order worksheet was submitted on September 15, 2020. This worksheet was dated September 15, 2020, and was labeled "**Final**". In addition to the listings on the first worksheet, the applicant handwrote other items in the claim. The additional claims listed were \$1,895.00 for July and August 2020, each, and a utility bill for \$368.55, for a total claim of **\$8,843.55**.

Late evidence was submitted on September 23, 2020, with a third monetary order worksheet. This worksheet was dated September 23, 2020 and was also labeled "**Final**". This worksheet showed a total claim of **\$6,740.00**. The landlord's monetary claim listed in this worksheet was partial rent for May 2020 of \$1,055.00, and \$1,895.00 for June, July and August 2020, each.

A tenant ledger sheet, was submitted on June 9, 2020.

A current statement, dated and submitted September 23, 2020, indicating four items: an amount due of \$1,895.00 for May 2020, a payment of \$840.00 in May 2020, for a net due of \$1,055.00, and three other items showing amounts due of \$1,895.00 for June, July and August 2020, each, with no payments made.

A condition inspection report (CIR), move-in and move-out, indicating that the tenant agreed the landlord could retain her security deposit and pet damage deposit for unpaid rent.

A mutual agreement, dated August 1, 2020, signed by the parties allowing the landlord to retain the tenant's security deposit and pet damage deposit of \$947.50 each to partially cover the debts toward unpaid rent.

The tenant's written notice to end the tenancy, which was signed and dated June 28, 2020 and submitted September 23, 2020.

Tenant's response –

The tenant said that when she gave verbal notice to end the tenancy, the landlord was put on notice that she was vacating the rental unit as she could no longer afford the rent. The tenant said the landlord's agent, ZS, indicated to her the verbal notice was sufficient to end the tenancy.

The tenant confirmed that she is not contesting the unpaid rent through July, just the unpaid rent claim for August 2020 as she was led to believe her verbal notice was sufficient in ending the tenancy. The tenant acknowledged that her evidence is a "she said, he said" type situation.

The tenant said she understood the rental unit was rented for August 2020, as she has heard from several former neighbours that they have seen people in and out of the rental unit.

In response to my inquiry, the tenant confirmed that the only additional evidence she would be able to provide are letters from the neighbours confirming seeing people coming in and out of the rental unit.

Analysis

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

Test for damages or loss

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 sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, Residential Tenancy Regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

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.

Upon a review, I find the landlord's evidence to be contradictory, inconsistent, and confusing.

For instance, the original monetary order worksheet showed a claim for partial rent for April owed of \$895.00 and full rent of \$1,895.00 owed for May. This evidence came with the landlord's application and was properly served on the tenant.

The landlord then submitted additional evidence, shortly prior to the hearing, a monetary order worksheet, labeled "Final", which then re-listed the claim of \$895.00 for partial rent for April, full rent of \$1,895 for May, June, July and August. That worksheet also included a claim for a utility bill.

Then the landlord's third monetary order worksheet, received by the tenant two days prior to the hearing, where the landlord removed the claim for partial rent for April and full rent for May, and replaced those amounts with a claim for partial rent for May of \$1,055.00 and full rent for June and July 2020. That third monetary order worksheet, which was the second worksheet labeled "Final", also removed the utility claim.

The landlord's evidence provided additional contradictions. The tenant's ledger sheet, submitted June 9, 2020, shows no payment of rent for May 2020, yet their third and final monetary order worksheet and current statement indicated a payment of \$840.00.

In cases where the evidence is unclear or inconsistent, it is unreliable. The landlord's agents did not sufficiently explain or clarify these discrepancies.

In this case, the tenant said she did not dispute the unpaid rent, with the exception of August 2020. The tenant, however, did not explain which of the three different claims of the landlord for unpaid rent with which she agreed.

I was left to interpret the applicant's unclear, inconsistent and contradictory evidence.

I find it reasonable to and therefore grant the landlord a monetary award of \$3,790.00, which is the unpaid monthly rent of \$1,895.00 each for June and July, which was clear and consistent and not specifically disputed by the tenant.

As to the claim for unpaid rent for May 2020, the tenant confirmed that she received the late evidence from the landlord, which showed on the third and final monetary order worksheet a claim of \$1,055.00 for partial rent and she did not specifically dispute this claim at the hearing.

I therefore find it reasonable to and therefore grant the landlord a monetary award of \$1,055.00 for partial rent for May 2020.

As to the issue of loss of rent revenue for August 2020, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give **written** notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. [*My emphasis*]

Therefore, the tenant was obligated to pay the monthly rent until the end of the fixed term, here, October 31, 2020, subject to the landlord's obligation to do whatever was reasonable to minimize their loss.

In respect of the landlord's claim for loss of rent revenue, I must consider whether the landlord has sufficiently mitigated their damages.

In considering the landlord's claim for loss of rent revenue for August 2020, I turn to their evidence. The landlord's agents testified that they did not receive the tenant's written notice until July 28, 2020, yet the written notice submitted by the landlord shows the written notice was dated June 28, 2020.

I therefore find it just as likely as not, that the tenant provided her written notice on June 28, 2020, not July 28, 2020. Therefore, the landlord was obligated from that date forward to do whatever was reasonable to minimize their loss.

There was no evidence from the landlord that they placed any advertisements or made sufficient attempts to re-rent the rental unit for August 2020. I find placing advertisements would have demonstrated at least a minimal, reasonable measure to mitigate their loss. As there was no evidence, I could not determine the frequency of advertisements, if any, or the amount of monthly rent sought.

I therefore find the landlord failed to meet their obligation under section 7(2) to do whatever is reasonable to minimize their loss for August 2020. As a result, I dismiss their claim of \$1,895.00.

As the landlord was partially successful, I grant the landlord recovery of their filing fee of \$100.00.

The landlord applied to keep the tenant's security deposit and pet damage deposit. While the landlord stated the security deposit and pet damage deposit had already been applied, their evidence did not indicate that they were. The three monetary order worksheets, tenant ledger sheet and current statement did not show these deductions.

I allow the landlord's request to retain the security deposit and pet damage deposit in partial satisfaction of their monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,050.00 under the following terms:

ITEM	AMOUNT
1. Partial unpaid rent for May 2020	\$1,055.00
2. Unpaid rent for June 2020	\$1,895.00
3. Unpaid rent for July 2020	\$1,895.00
4. Filing fee	\$100.00
5. Less security deposit	-\$947.50
6. Less pet damage deposit	-\$947.50
TOTAL MONETARY ORDER	\$3,050.00

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. 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: October 6, 2020

Residential Tenancy Branch