



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, CNC, CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural matters

The landlords have filed a second application for subsequent loss of rent; however, I find it appropriate to join that matter with today's hearing. I do not find this prejudicial to the tenant to join that application with today's hearing, as rent is the most basic term of all tenancies and I would have allowed the landlord's application simply to be amended for this issue. The file number is noted on the covering page of this decision.

The tenant filed an application for dispute resolution scheduled to be heard on October 15, 2020, to cancel a One Month Notice to End Tenancy for Cause and to cancel a 10 Day Notice for Unpaid Rent. The tenant indicated at the start of the hearing that they are currently vacating the premise and will be gone no later than October 8, 2020. I find it not prejudicial to either party to join the tenant's application with today's hearing. The file number is noted on the covering page of this decision.

The parties agreed at the hearing that the tenant will vacate the premise no later than October 8, 2020. I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective October 8, 2020 at 1:00 pm. A copy of this order must be served upon the tenant. This order may be filed in the Supreme Court

and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I have also amended the style of cause to reflect the names that are listed in the signed tenancy agreement. I do not find this prejudicial to either party.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenant sold the property to the landlord and that there was an agreement that the previous owner would stay under a tenancy agreement which began on October 5, 2020. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00.

The landlords claims as follows:

| | | |
|----|-------------------------------------|--------------------|
| a. | Unpaid rent for April, May and June | \$ 600.00 |
| b. | Unpaid rent for September 2020 | \$ 700.00 |
| c. | Unpaid rent for October 2020 | \$ 1,200.00 |
| d. | Less credit | \$ -14.85 |
| e. | Filing fee | \$ 100.00 |
| | Total claimed | \$ 2,585.15 |

The landlord testified that the tenant paid \$700.00 towards rent for April, May and June 2020, each month and applied for BC Housing assistance; however, BC Housing only paid the amount of \$300.00 towards each of these months leaving a shortfall of \$200.00 per month. The landlord stated they received two payment on May 1, 2020 and a further cheque on June 2, 2020 from BC Housing. The landlord seek to recover unpaid rent for the above months in the total amount of \$600.00

The landlord testified that rent for July and August were paid. The tenant paid \$700.00 and BC Housing changed the subsidy to \$500.00 resulting in no shortfall

The landlord testified that they received the BC Housing subsidy for September 2020 in the amount of \$500.00; however, the tenant did not pay the balance of \$700.00 . The landlord seeks to recover unpaid rent for September 2020 in the amount of \$700.00.

The landlord testified that the tenant has not paid any rent for October 2020. The landlord seeks to recover the amount of unpaid rent for October 2020 in the amount of \$1,200.00.

The landlord testified that there was a credit on the tenant's account of \$14.85, for batteries, which should be taken off the total owed.

The tenant testified that they thought that BC Housing sent an additional cheque to top-up the first payments as they were for \$300.00 not \$500.00. The tenant submit no evidence from BC Housing to support this.

The tenant testified that they sent two etransfers in July 2020, both in the amount of \$700.00. The tenant filed in evidence an incomplete copy of their bank statement, it does not show who the etransfers were sent to.

The tenant testified that they agreed they did not pay the landlord any additional amount for September 2020 other than what BC Housing sent of \$500.00. The tenant testified that they should not owe rent for October 2020, because the landlord issued the notices to end the tenancy, which the effective date of the one month notice was September 30, 2020, and they are only staying longer because they needed the extra time and does not justify a full month of rent.

The tenant testified that the landlord also owes them for cablevision which was included in the rent. The tenant stated the landlord always paid that directly to the account; however, as the landlord has changed the account they are still owed for September 2020.

The landlord argued they did not receive any top-up cheque from BC Housing. The landlord stated only one etransfer payment of \$700.00 was received in July 2020. The landlord agreed that the amount of \$132.00 for cablevision for September 2020, can be deducted from the amount owed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

...

Under the Act the tenant must pay rent when it is due under the terms of the tenancy agreement. I accept the evidence of the landlord that the tenant has failed to pay rent, and this has caused losses to the landlord. I find the tenant has breached section 26 of the Act for the following reasons.

The tenant's rent was short \$200.00 for the months of April, May and June 2020 for a total shortfall of \$600.00. The tenant provided no evidence that BC Housing sent the landlord any additional payment for these months. I find the landlords are entitled to recover unpaid rent for the above said months in the amount of **\$600.00**.

The tenant claimed they made two rent payments in July 2020; while I accept their bank statement for July show two separate etransfers, that alone does not prove it was actually sent to the landlord. The tenant did not provide a copy of the etransfer history

which would show who it was sent to, the email address it was sent to, and if it was accepted.

The landlord received from BC Housing \$500.00 for September rent, which the tenant admitted they did not pay the balance due of \$700.00. I find the landlords are entitled to recover unpaid rent for September 2020, in the amount of **\$700.00**.

While the tenant argues the landlord should not be entitled to rent for October 2020. I find the tenant's position is unreasonable and contrary to the Act. The tenant was served with two different notices to end the tenancy and did not vacate on those notices. Rather the tenant disputed those notices, knowing they would be leaving the premise before that hearing date arrived. That is an abusive of the system and does not give the landlord a chance to mitigate the loss. Further, rent was due and owing on October 1, 2020. The landlord is entitled to be in the same position as if the tenant had not breached the Act. I find the landlords are entitled to recover unpaid rent for October 2020, in the amount of **\$1,200.00**.

I find that the landlords have established a total monetary claim of **\$2,600.00** comprised of the above described amounts and the \$100.00 fee paid for this application. This amount will be reduced by **\$14.85**, the credit on the tenant's account, and a further amount of **\$132.00** for September 2020 cablevision. This leaving the balance due of **\$2,453.15**.

I order that the landlords retain the security deposit of **\$600.00** and pet damage deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$1,253.15**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords are granted an order of possession. The landlords are granted a monetary order for unpaid rent and may keep the security deposit and pet damage in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 07, 2020

Residential Tenancy Branch