



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties confirmed the landlords served the tenant with the notice of hearing package via Canada Post Registered Mail on December 16, 2020. Both parties confirmed the landlords served the tenant with the submitted documentary evidence via Canada Post Registered Mail on March 15, 2021. Both parties confirmed the tenant served the landlords with the submitted documentary evidence via Canada Post Registered Mail on March 18, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 15, 2017 on fixed term tenancy ending on May 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 8, 2017. The monthly rent was \$1,550.00 payable on the 1st day of each month. A security deposit of \$775.00 was paid.

The landlords seek a monetary claim of \$3,240.00 which consists of:

| | |
|------------|-------------------------------------|
| \$1,652.00 | Late Notice, December Rent |
| \$1,488.00 | Rental Summary, Outstanding Balance |
| \$100.00 | Filing Fee |

The landlords claim that the tenant provided late notice to end the tenancy on November 2, 2020 to vacate the rental unit on November 30, 2020. The landlords seek compensation for loss of rent of \$1,652.00 for December 2020. The landlords also seek recovery of unpaid rental arrears of \$1,488.00 despite the tenant being in arrears for \$3,140.00. The landlords have reduced the arrears by one months rent (\$1,652.00) as per an initial agreement to waive April 2020 Rent and also seeks to retain the \$775.00 security deposit to offset their claim.

The landlords state that the tenant provided late notice via email on November 2, 2020 as per the submitted copy of the email. The landlord seeks recovery of loss of rent for December 2020 of \$1,652.00. The tenant confirmed that notice to vacate was given to the landlord on November 2, 2020 after receiving information that the landlord had accepted an agreement for sale of the rental unit on October 31, 2020. The tenant argued that the landlord made no effort to advertise the unit for rent as a sale for the property closed on January 18, 2021. The landlord confirmed that no effort was made to advertise the unit for rent as it was sold as claimed by the tenant.

The landlords stated that the tenant failed to pay all of the rent for:

| | | |
|----------------|----------|--------------|
| May 2020 | \$652.00 | Rent Owed |
| June 2020 | \$652.00 | Rent Owed |
| July 2020 | \$652.00 | Rent Owed |
| August 2020 | +\$42.00 | Over Payment |
| September 2020 | +\$42.00 | Over Payment |
| October 2020 | +\$42.00 | Over Payment |

| | | |
|---------------|------------|--------------|
| November 2020 | +\$42.00 | Over Payment |
| Total | \$1,488.00 | |

The landlords submitted a copy of a "Payment Summary" a spreadsheet detailing the tenant's partial payments for the noted months April 2020 to November 2020. The landlord stated that the tenant's \$42.00 over payments were applied against the rental arrears owed for the total arrears of \$1,488.00.

The tenant argued that the landlord had entered into a limited agreement for rent for the period May 2020 to July 2020 inclusive limiting the monthly rent to \$1,000.00. The tenant stated that an email was sent to the landlords on March 19, 2020 notifying the landlords that her office was closed indefinitely. The email states in part,

Due to this unfavorable circumstance, my dental office is closed indefinitely. I am currently not eligible for EI as I am contract base work until policies change; resulting in an unfortunate financial situation.

I have not been payed for the month of March and will not be able to pay April's month rent.

I am uncertain for the foreseeable future and will not have the ability to continue living in the unit. I will be moving out of the apartment by end of March.

I will ensure the unit is clean and ready for the next tenant and will expect that my damage deposit be returned in full. I understand you will need to do constant showings and I will do everything to accomodate.

[reproduced as written]

A respond was made by the landlords in an email dated March 24, 2020. It states in part,

The owners have kindly offered for you to stay for the month of April at no rent. They are stating that should all be fine with the suite upon vacating they would return the damage deposit to you.

[reproduced as written]

The tenant responded in an email dated March 24, 2020 which states in part,

It is an unbelievably gracious offer by the owners. I will accept their offer to stay for the month of April at no rent. This offer will help me from having to struggle and move so quickly. I will ensure the unit is spotless at the end of April.

[reproduced as written]

The tenant referred to another email dated April 17, 2020 which states in part,

With everything going on due to the Covid-19, my alternative living arrangements did not work out; thus I will not be able to move out at the end of the month as I have nowhere to go. The landlords have been great to me and even though I am not working right now I want to do my part as best I can. I can pay \$700 for next month rent and will be able to fill out the rent subsidy so the landlord can get additional \$300/month for a total of \$1000/month. I know this is not ideal but it is the best I can do until I go back to work.

[reproduced as written]

The tenant has referenced an email dated June 20,2020 from the tenant to the landlord which states in part,

I have finally been informed that I will be starting work full time next week Monday. Unfortunately, I've been unemployed since. I am only able to contribute to \$700 for the month of July as I have yet to receive money from CERB. The BC rental supplement has been extended for the month of July and August 2020. Thus, the landlords will be receiving \$300 for the month of July and August.

For the month of August, I'll be able to pay full months rent minus the \$300 that the government will be paying.

[reproduced as written]

The tenant also referred to a emailed reply from the landlord dated June 22, 2020 which states in part,

We have forwarded your email to the owner for their consideration. We will contact you as soon as we hear back from them.

[reproduced as written]

The tenant has referenced an email dated July 26, 2020 titled, "Exhibit 5" from the tenant to the landlord which states in part,

Through Rent Moola, I have deposited August 2020 rent totaling of \$1394. It is \$300 less than the monthly rate of (\$1694) as the government will be depositing the last rent supplement payment of \$300 for August 2020.

I also wanted to inform you regarding the smoke detector. The strata had requested all tenants to purchase a smoke detector at our own expense and replace the existing one due to its expiration. I had replaced the one in my unit recently with the strata's approved and recommend smoke alarm/ carbon dioxide Detector, the total costing \$70. [reproduced as written]

The tenant repeated the argument that the landlord had accepted the new terms of a limited tenancy agreement for the months July and August 2020 for rent of \$1,000.00 per month based upon the above noted email communications. The tenant argued that the email communications form the tenant's offer of rent payment and despite the landlord's lack of response, an agreement by not disputing the offer.

The landlord argues that at no time was a limited agreement made with the tenant to waive the tenant's rent and limiting it to a monthly rent of \$1,000.00 for July and August of 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

On the landlord's claim for loss of rent of \$1,652.00, I find that the landlord has failed. Despite both parties confirming that late notice to end the tenancy was given on November 2, 2020 to end the tenancy on November 30, 2020, the landlord has failed to demonstrate their duty to minimize any losses. In this case, the landlord confirmed that no efforts were made to advertise the unit for rent. The tenant in fact provided undisputed evidence that the rental property was sold and was notified of such on October 31, 2020.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss...Compensation will not be awarded for damage or loss that could have been reasonably avoided...

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

- 1) re-rent the rental unit at a rent that is reasonable for the unit or site; and
- 2) re-rent the unit as soon as possible.

In this case, the landlord failed to even attempt to minimize any losses. As such, this portion of the landlord's claim is dismissed without leave to reapply.

On the landlord's claim for unpaid rent of \$1,488.00, I find on a balance of probabilities that the landlord has established a claim for rental arrears. Despite the tenant arguing that a limited agreement for rent was established with the landlord, the landlord has disputed that no such agreement had been made. The tenant has relied solely on her interpretation of email communications between the two parties. A review of the email exchanges does confirm that the tenant was only able to offer payment of rent while public health policies were developing. The tenant relied on one particular email in which the landlord's agent had referred the payment offer to the landlord, but had not received a reply. The tenant has inferred that this was an acceptance of such. The landlord reiterated that the landlord made an offer to forgo April 2020 rent to assist the tenant during this time period but has repeatedly stated in direct testimony that at no time was a limited agreement for rent was established. I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to satisfy me that an

agreement was made to limit the monthly rent as claimed by the tenant. As such, the landlord is entitled to recovery of unpaid rent of \$1,488.00.

The landlord is entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$775.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$813.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: April 6, 2021

Residential Tenancy Branch