



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC

Introduction

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

- a monetary order for unpaid rent, damage and loss arising from the tenancy agreement pursuant to section 67; and
- 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-tenant RZL confirmed she represented both named tenants (the "tenant").

As both parties were in attendance I attempted to confirm there were no issues with service. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant testified that she mailed the tenant's evidence package to the landlord. The landlord denied receiving the tenant's evidence. I find that the tenant was served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*. As I find that the tenant's evidence consists of a written summary of the tenant's submissions and documents originally produced by the landlord I found there to be no prejudice to its inclusion and in accordance with Rule of Procedure 3.17 and 71(2)(c) of the *Act*, deem the tenant's evidence to have been sufficiently served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Background and Evidence

The parties agreed on the following facts. This tenancy began in 2014 when the landlord purchased the property and the existing tenancy. The tenants had originally moved into the rental unit in 2009. No condition inspection report was prepared in either 2009, when the tenants first took possession of the rental unit, or in 2014 when the landlord purchased the property.

The monthly rent at the end of the tenancy was \$950.00 payable on the 15th of each month. A security deposit of \$475.00 was paid at the start of the tenancy and is still held by the landlord.

The tenancy ended on August 8, 2016 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") dated June 15, 2016. The reason provided on the 2 Month Notice is that the landlord has all necessary permits to demolish the rental unit or renovate or repair in a manner that requires vacant possession. No condition inspection report was prepared at the end of the tenancy. The tenant testified that a forwarding address was provided in writing to the landlord on August 8, 2016. The landlord initially disputed that any forwarding address was provided at all but later said that he believed that an address was provided later in the month of August.

The landlord said that rent was not paid for the months of June and July, 2016. The tenant testified that rent was paid in full for those months and no rent was paid for August pursuant to the 2 Month Notice.

The landlord said that the rental unit required repairs and upgrade work after the tenant vacated. The landlord said that the total amount of the damages and loss attributable to the repairs is \$4,921.00.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenants provided written notice of the forwarding address during the month of August, 2016. The landlord filed an application for authorization to retain the full security deposit on March 20, 2017, outside of the 15 days provided under the Act.

Furthermore, the parties have testified that no condition inspection report was prepared at either the start or end of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy in accordance with the *Act*.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit for this tenancy and has failed to return the tenants' security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$950.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Given the conflicting testimony regarding payment of the monthly rent for the months of June and July, 2016 I must first turn to a determination of credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Taken in its entirety I find the tenant's testimony that rent has been paid in full to be more convincing. I do not find the landlord's evidence to be credible, believable or supported by any of the written evidence. The tenant said that the rent was paid by

cheque and provided information, such as the cheque number and date of withdrawal, in support of their position that rent was paid. The tenant said that the last month's rent was withheld in accordance with section 51 of the *Act* as they had been served with a 2 Month Notice. I accept the tenants' evidence that there is no rental arrear for this tenancy. Accordingly, I dismiss this portion of the landlord's claim.

The landlord claims the amount of \$4,921.00 for damages to the rental unit. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. Pursuant to section 7(2) of the *Act* the claimant must take reasonable steps to attempt to minimize the damage or loss.

While the landlord has testified regarding the damage to the rental unit, in the absence of a condition inspection report there is little evidence of the original condition. I find that there is insufficient evidence to show that there was damage to the rental unit caused by the tenant. Additionally, the landlord issued the 2 Month Notice with the stated purpose of performing renovations or demolition. Under the circumstances I find it more likely that the repairs performed by the landlord arose as part of the planned upgrades and are not the responsibility of the tenants. I find, based on the evidence submitted by the parties that the landlord has not proven there is damage or loss arising as a result of the tenants' violation of the *Act*, regulation or tenancy agreement. Consequently, I dismiss the landlord's claim.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$950.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

The landlord's application is dismissed.

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: August 24, 2017

Residential Tenancy Branch