



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S
 OLC FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony, and were given an opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on July 1, 2016 and expired on April 30, 2017 thereafter reverting to a month-to-month tenancy which ultimately ended on

November 30, 2017. Rent in the amount of \$1,800.00 per month was originally payable on the 1st day of each month, however was increased to \$1,880.00 per month during the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 50 or 60 other units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord also testified that a Notice of Rent Increase had been served on the tenant increasing rent by \$200.00 per month. The landlord checked advertisements for similar rentals and found that the increase was fair market value. The tenant did not agree and the parties negotiated an increase of \$80.00 per month.

The landlord further testified that the tenant gave the landlord notice to vacate the rental unit on November 19, 2017 by email which was effective the evening of November 30, 2017. A copy of the email has been provided as evidence for this hearing which also states that the tenant is agreeable to paying rent for December, 2017 if the landlord is unable to re-rent prior to December 1, 2017. The parties stayed in touch and the landlord was going to place advertisements but the tenant insisted on doing so, so that the tenant could arrange showings, and the landlord allowed that. Apparently there were some showings but no results.

A move-in condition inspection report was completed at the beginning of the tenancy but a copy has not been provided for this hearing. The landlord went to the rental unit on November 30, 2017 and the tenant was still at the rental unit. A move-out condition inspection report was completed but the tenant didn't sign it, and a copy has not been provided for this hearing. At that time the landlord offered the tenant to pay \$1,200.00 for December's rent in addition to a cleaning fee, but the tenant refused.

About a week after the tenant moved out the landlord hired someone to clean. The rental unit had been rented furnished, and all appliances, the bathroom, the kitchen and all floors were a total mess. The cleaner spent 2 ½ hours to clean the oven, and dishes were left in the sink. A hand-written note from the cleaner has been provided as evidence for this hearing showing a fee paid of \$350.00.

The tenant has not provided the landlord with a forwarding address in writing until the landlord received the tenant's hearing package for this hearing, which does include an address for the tenant.

The rental unit remained vacant for the month of December, 2017 and was re-rented effective January 1, 2018. The landlord claims \$1,880.00 for unpaid rent for the month of

December as well as \$350.00 for cleaning and recovery of the \$100.00 filing fee for the cost of this application.

The tenant testified that he did not insist on running advertisements to re-rent the rental unit, but the parties agreed that the tenant's phone number be listed. The tenant looked at the landlord's previous advertisement and made some changes and sent them to the landlord who also made some changes. The landlord placed the advertisement, and the tenant contributed and offered his help. Two parties attended to see the rental unit and the tenant gave them the landlord's Application to Rent. For the third viewing, the tenant made himself available to show it within minutes, but it was not re-rented.

The tenant intended to clean the rental unit before leaving, but didn't get a chance and told the landlord that she could keep the security deposit. The tenant did not agree to pay the rest of the rent but agreed to pay for cleaning if done professionally. The tenant speculates that the landlord didn't have it done professionally, given that all that the landlord has provided as evidence is a handwritten note from a person stating that the fee for cleaning was \$350.00. Further, the oven was not clean at move-in and had grease splattered on the walls of it, so to say it took hours to clean it is not entirely the fault of the tenant.

The tenant has prepared a document for this hearing setting out the time-line of events, and testified that the landlord inconvenienced the tenant. Firstly, the landlord did not introduce the tenant to the building manager. Also, the address for service of the landlord on the tenancy agreement is not the residence or place of business of the landlord, and the tenant was told by the Residential Tenancy Branch that the tenant needed to know where the landlord was in order to enforce any orders. The landlord was trying to avoid the tenant.

The landlord sent the tenant a Notice of Rent Increase by email, not regular mail. A copy has been provided which increases rent by \$200.00 per month. It is not dated or signed by the landlord. The tenant told the landlord that 3.7% is the allowable amount which is under \$67.00 per month, and the parties negotiated the increase to \$80.00 per month.

The tenant also testified that he was told by the building manager that the range of rent in the building was \$1,400.00 per month for the upper floors and \$1,100.00 for lower levels, and this rental unit was on the 7th floor. The landlord is sub-letting the apartment and the tenancy agreement specifies that a sublease had to be for the same amount of rent, but the tenant doesn't know how much the landlord was paying the owner.

The tenant seeks an opinion on whether or not the tenant is responsible for paying December's rent, and testified that after telling the landlord that the tenant's application was filed to get such an opinion, the landlord gave the tenant a handwritten letter to sign to

mutually agree to end the tenancy. The landlord also wanted the tenant to sign the move-out condition inspection report but the tenant was tired and stressed. Both parties believed that the tenant was to be moved out by the end of the day on November 30, 2017.

When asked if the tenant had disputed the rental increase, the tenant testified that he had not disputed it, but agreed that \$80.00 was sufficient, and also agreed that the landlord should keep the security deposit for all of the landlord's claims. The tenant believes that should be enough considering the inconveniences the tenant endured.

Analysis

The purpose of a dispute resolution hearing is not to receive an opinion, but a binding Decision and order based on the *Residential Tenancy Act*.

The *Act* also states that a tenant wishing to end a tenancy must provide the landlord with notice in writing, and that notice must be given the day before the day rent is payable under the tenancy agreement and must be effective at the end of the period for which rent is payable. In this case, the parties agree that rent is due on the 1st day of the month and the landlord has accepted the tenant's notice by email. However, the tenant's notice is dated November 19, 2017, which means that it cannot be effective until the end of December, 2017, and rent is payable to that date. The *Act* also states that tenancies end at 1:00 p.m.

The *Act* also requires a party who makes a monetary claim to do whatever is reasonable to mitigate any loss suffered, meaning that the landlord has the obligation to advertise the rental unit for a similar amount of rent within a reasonable time after receiving the tenant's notice. In this case, the tenant testified that the landlord advertised the rental unit and the tenant agreed that his phone number should be on the advertisement so that he could arrange the showings. I find that to be reasonable, but that does not mean that the landlord hasn't mitigated. In the circumstances, I find that the tenant is liable for rent for December, 2017 in the amount of \$1,880.00.

I also find that the tenant agreed to the rent increase of \$80.00 per month, and I make no further findings with respect to the increase. However, the tenant's position is that the tenancy agreement specifies that any sub-lease must be for the same amount of rent that the landlord pays to the owner. The tenant testified that he enquired about it and was told about a range of rents payable depending on which floor of the complex the unit is located, but has not provided any evidence of what that amount is.

Therefore, I find that the tenant has not satisfied me that the landlord has charged more rent than she was entitled to. The tenancy agreement speaks for itself.

With respect to the landlord's claim for cleaning, the tenant agreed that he didn't clean and was prepared to pay for a professional cleaner but is not satisfied that the landlord hired a professional. The *Act* requires a tenant to clean the rental unit prior to leaving at the end of a tenancy, and it's not up to the tenant whether the landlord hires professionals to complete that job or not. I find that the landlord has established the \$350.00 cleaning costs.

The tenant has not made a monetary claim as against the landlord, however I find that the tenant is entitled to recovery of the \$900.00 security deposit by way of a set-off from the landlord's claims.

Having found that the landlord is entitled to \$1,880.00 for December, 2017 rent and \$350.00 for cleaning, the landlord is also entitled to recovery of the \$100.00 filing fee. I set off those amounts and I grant the landlord a monetary order for the difference in the amount of \$1,430.00. The tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby order the landlord to keep the \$900.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,430.00.

This order is final and binding and may be enforced.

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: March 08, 2018

Residential Tenancy Branch