



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDL-S, MNRL-S, FFL

Introduction

Pursuant to section 9.1 (1) of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the *Act*;
- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was properly served and submitted by all parties. There was an Amendment to the Application made by the landlord on June 2, 2018, to reduce the amount of the total monetary claim to \$2,103.13. The tenant said that she had not received notice of the Amendment but, as it was in her favor and was simple in that it reduced the claim for lost rent from 6 months to one month she was prepared to proceed today.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decided

Is the landlord entitled to:

- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the *Act*;
- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

This was a short tenancy. It began when the tenant took occupation of the premises on October 20, 2017 and concluded when the tenant vacated the premises on November 30, 2017.

There was a written tenancy agreement filed that provided that the tenancy was to run from November 1, 2017 to April 30, 2018. Rent was payable at the rate of \$1,600.00 per month on the first day of each month. The tenant agreed to pay a damage deposit of \$800.00 plus a pet deposit of \$300.00.

The parties agree that the tenant paid \$2,800.00 in cash to the landlord on October 20, 2017, when she moved in. The parties also agree that the tenant was obligated to pay the sum of \$500 for her occupancy of the premises during the month of October although this is not reflected in the written tenancy agreement filed.

On November 13, 2017, the tenant sent the landlord a text to say she had lost her job and the parties agree that from that point forward it was understood that the tenant would be leaving. The landlord began to show the premises to prospective new tenants shortly thereafter and the tenant cooperated with this process. The parties agree that the tenant vacated the premises on November 30, 2017, and that there was no move-out inspection done at the time although the landlord did attend at the premises to meet the tenant that evening to get the keys back.

The landlord had new tenants move in on December 1 or 2 of 2017, and they paid rent in full for the month of December at a rate higher than \$1,600.00 per month.

The tenant states that the sum of \$2,800.00 paid to the landlord on October 20, 2017, represented the rent owing for October (\$500.00) + the security deposit (\$800.00) + a partial payment of the rent owing for November (\$1,500.00). She states that she paid the further sum of \$450.00 cash to the landlord on November 14, 2017, that represented the money still owing for rent (\$100.00) + the pet deposit she believed was payable (\$350.00).

The landlord admits receiving the \$2,800.00 in cash from the tenant on October 20, 2017. The landlord claims this represented the rent owing for October (\$500.00), plus the rent owing for November (\$1,600.00), plus a payment towards the security deposit (\$700.00). He denies receiving any further monies from the tenant on November 14, 2017, or at any other time. As a result, the landlord claims he has only ever received \$700.00 toward to total combined owing of \$1,100.00 for the pet and security deposits, leaving a balance owing of \$400.00.

The parties have agreed that the tenant owes, and the landlord has agreed to accept the following amounts for his damage/loss claims:

Item	Amount
Carpet cleaning	\$73.50
Replace damaged blind	116.48
Water/sewer/garbage City bill	88.15
Hauling garbage to dump	50.00
Application filing fee	100.00
Total Monetary Order agreed to	\$428.13

The landlord sent the tenant a cheque in the amount of \$288.52 dated December 12, 2017, as a partial repayment of the damage deposit paid by the tenant,

Analysis

The critical issue in this case is the actual amount of money paid by the tenant to the landlord and, what portion of this money was for a damage or pet deposit.

Where there was a conflict in the evidence of the parties I found the evidence of the landlord to be more reliable. The landlord was very clear in his evidence and his recollections. The tenant was unable to remember exact dates and amounts and at times her evidence was contradictory.

The crucial evidence in terms of reliability relates to the tenant's assertion that she paid the further sum of \$450.00 cash to the landlord on November 14, 2017. The landlord denies this ever happened and took the time to challenge the tenant on this point during questioning. He put to her that her assertion of this payment was not true and said he was disappointed she had chosen to lie about this. In response the tenant only said it was her "opinion" that she had made this payment. I also took note of the fact that the tenant did not get a receipt for this payment and, there was no text or email from her to confirm this payment had been made.

I find that the landlord received \$2,800.00 in cash from the tenant on October 20, 2017 and, that this represented the rent owing for October (\$500.00), plus the rent owing for November (\$1,600.00), plus a payment towards the security deposit (\$700.00). Having determined what the landlord was paid, I now turn to the issue of what the landlord is owed as a result of this tenancy.

The tenant breached the terms of the tenancy agreement by vacating the premises after only one month of a six month fixed term tenancy agreement.

Either party to a tenancy may bring an application for damages under section 67 of the *Act* which states:

Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

With respect to the claim by the landlord for the sum of \$1,600.00 being rent for the month of December 2017, I find that the landlord has not led evidence sufficient to establish all four points set out above. There was no loss of rent as the landlord had new tenants move in on December 1 or 2 of 2017, and they paid rent in full for the month of December at a rate higher than \$1,600.00 per month. Accordingly, there will be no order for damages for lost rent pursuant to section 67 of the *Act*.

With respect to the claim by the landlord for damages for repairs to the premises, clean up costs, unpaid utilities and the filing fee, as noted above the parties have agreed that the tenant owes the landlord \$428.13 and this will be reflected in the final order.

The situation with payment of the security deposits is the final issue to resolve. I have found that the landlord received the sum of \$700.00 towards the security deposits. On December 12, 2017, the landlord sent the tenant a cheque in the amount of \$288.52 as a partial repayment of the damage deposit paid by the tenant. This means he has retained the sum of \$411.48 from the tenant.

The landlord extinguished the right to claim against the security deposit or pet damage deposit by failing to perform a written condition inspection report at the end of the tenancy. This extinguishment is explained in section 36(2) of the *Act* as follows:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion,
or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the *Act*.

By failing to perform the outgoing condition inspection in accordance with the *Act*, the landlord extinguished the right to claim against the security deposit for damages, pursuant to section 36(2) of the *Act*. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The landlord may only keep all or a portion of the deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant.

There was no evidence to show that the tenant had agreed in writing, that the landlord could retain any portion of the security deposit. The landlord did not have any authority under the *Act* to keep any portion of the deposit. Therefore, I find that the landlord is not entitled to retain any portion of the deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the landlord owes the tenant the sum of \$822.96, comprising of double the security deposit which the landlord has retained in violation of section 38 (6) (b) the *Act* (2 x \$411.48).

The net result of the findings above is that the landlord owes the tenant the sum of **\$394.83**, (822.96 owing to tenant – 428.13 owing to landlord).

Conclusion

The tenant is given a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: June 28, 2018

Residential Tenancy Branch