



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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 2, 2018 (the “Application”). The Landlord sought to recover money for unpaid rent and cleaning costs. The Landlord also sought reimbursement for the filing fee and to keep the security deposit.

The Landlord appeared at the hearing. S.C., the Co-landlord also appeared. Tenant J.D. appeared at the hearing and appeared for Tenant K.M. I explained the hearing process to the parties and nobody had questions when asked. All parties provided affirmed testimony.

I obtained the correct legal names of the Tenants during the hearing and these are reflected in the style of cause.

Both the Landlord and Tenants submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. Tenant J.D. confirmed he received the hearing package and some of the Landlord’s evidence. The evidence Tenant J.D. did not receive is not relevant to the issues raised in the Application. The Landlord confirmed she received the Tenants’ evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for unpaid rent?
2. Is the Landlord entitled to compensation for cleaning costs?
3. Is the Landlord entitled to keep the security deposit?

Background and Evidence

The Landlord sought the following compensation:

Rent for February, March, April 2018	\$6,825.00
Cleaning costs	\$800.00
TOTAL	\$7,625.00
Minus security deposit	\$1,137.50
TOTAL OUTSTANDING	\$6,487.50

I note that this is a different amount than the \$6,588.00 listed on the Application. However, the Landlord provided a clear outline of the compensation she was requesting and therefore I find it appropriate to consider the amounts outlined in the above table.

A written tenancy agreement was submitted as evidence and both the Landlord and Tenant J.D. agreed it is accurate. It is between the Landlord, Co-landlord and Tenants. The tenancy started July 1, 2017 and was for a fixed term of one year ending July 1, 2018. Rent was \$2,275.00 per month. The Tenants paid a security deposit of \$1,137.50. The agreement is signed by all parties. The Landlord and Tenant J.D. agreed the Tenants moved out January 31, 2018.

The Landlord and Tenant J.D. agreed that the Tenants provided their forwarding address to the Landlord via email February 2, 2018. The Landlord confirmed she applied to keep the security deposit May 2, 2018.

The Landlord and Tenant J.D. both said Tenant J.D. agreed via email that the Landlord could keep the security deposit. The parties referred to an email dated January 31, 2018 submitted as evidence in this regard. The email addresses the Tenants allowing the Landlord to keep the security deposit as liquidated damages. At the hearing, I confirmed with Tenant J.D. that he is agreeing to the Landlord keeping the security deposit. He said he is but not for cleaning.

The Landlord and Tenant J.D. agreed on the following. They did a move-in inspection July 1, 2017. The unit was empty. A Condition Inspection Report was completed and signed by both. The Landlord gave a copy of the report to Tenant J.D. Tenant J.D. did not raise any issue regarding how the report was provided. The Landlord and Tenant J.D. both agreed the report submitted is accurate.

The Landlord testified that a move-out inspection was done February 2, 2018. Tenant J.D. did not know if one was done. The parties agreed the Tenants did not participate in a move-out inspection. The Landlord testified that she provided the Tenants with two opportunities to do the inspection. Tenant J.D. disagreed with this and said the Tenants tried to arrange to do a move-out inspection several times but by the time the Landlord could meet they had moved out. The Tenants submitted email correspondence between them and the Landlord about arranging a "move-out meeting". The Landlord said she did not provide the Tenants with the second opportunity for the inspection on the approved form.

In relation to the move-out inspection, the Landlord testified that the unit was empty at the time. The Landlord said she completed and signed a Condition Inspection Report. The Landlord said she sent the Tenants a copy of the report for the first time as evidence for this hearing and Tenant J.D. agreed with this. The Landlord said the Condition Inspection Report submitted is accurate. I understood Tenant J.D. to note that there are a lot of "dirty" notations on the report and to acknowledge that there probably was some dirt.

Rent for February, March, April 2018

The Landlord testified as follows in relation to the rent for February, March and April 2018. She received an email December 27, 2017 from the Tenants saying they were moving at the end of January. She posted the rental unit for rent on craigslist January 2, 2018. She posted the unit for rent at \$2,275.00. She did have the unit posted at \$2,375.00 for one week in January. She was unable to re-rent the unit until May 1, 2018. She re-rented the unit for \$2,275.00.

The Landlord submitted that the Tenants were not permitted to end the tenancy early. She submitted that she did her due diligence to re-rent the unit.

Tenant J.D. did not dispute that the Tenants breached the tenancy agreement. He pointed to an email dated December 30, 2017 from him to the Landlord advising that the

Tenants would be ending the tenancy as of January 31, 2018. Tenant J.D. did not dispute that the Landlord posted the unit for rent January 2, 2018.

Tenant J.D. testified that the unit was listed for \$2,550.00 rent not \$2,275.00 rent. He submitted that this was a large rent increase. He also testified that there were no photos of the unit included in the posting. He said that because of this, the Tenants took photos and emailed them to the Landlord January 6, 2018. The Tenants had submitted these emails as evidence. Tenant J.D. disputed that the Landlord did her due diligence to re-rent the unit.

Tenant J.D. pointed to an email submitted as evidence dated January 22, 2018 from the Landlord. It says, "the apartment is at 2275 since Saturday, and unfortunately still no phone calls". Tenant J.D. submitted that this email shows the rent was higher than \$2,275 prior to January 22, 2018.

Tenant J.D. pointed to an email dated March 21, 2018 submitted as evidence. It is from the Landlord. It states the unit was rented as of April 1, 2018.

In reply, the Landlord testified as follows. She never posted the unit for rent at \$2,550.00. She sent emails to Tenant J.D. whenever there had been a good viewing. The tenancy for April 1, 2018 never materialized until May 1, 2018. The Landlord agreed the rental posting did not originally have photos. She testified that she was away and did not have access to photos but added photos January 5 or 6, 2018.

Cleaning costs

In relation to the cleaning costs, the Landlord testified that it cost \$800.00 to clean the windows, blinds, balcony, oven and whatever else the cleaner did. I understood the Landlord to say the cleaning took five hours. She testified that a person she knows did the cleaning. She said cleaning blinds and windows alone usually costs \$350.00 to \$450.00. She pointed to photos and a cleaning receipt submitted as evidence.

The photos show that the oven, window sill, microwave and toilet may have needed some cleaning.

The cleaning receipt is for \$800.00 for "house cleaning / windows cleaning / V. blinds cleaning". It does not indicate how long the cleaning took. It does not refer to the address of the rental unit. It is not from a cleaning company. It is a handwritten receipt from a receipt book that is signed by the male who the Landlord says did the cleaning.

Tenant J.D. raised concerns about the cleaning and receipt. He pointed out it was not done by a cleaning company. I understood him to say that the unit was not incredibly dirty. Tenant J.D. pointed to an outline of cleaning rates from Maid Sense Environmental Cleaning submitted as evidence. It shows “moving cleans” are between \$90.00 and \$200.00 for an apartment between 600 and 900 square feet. The Landlord had testified that the rental unit is 700 square feet.

The Condition Inspection Report on move-out is not completed properly. The condition codes are entered under “Condition at Beginning of Tenancy”. There are numerous “dirty” codes listed for the kitchen, living room, bathroom and bedroom. The Landlord signed the report.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* sets out tenant’s obligations upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenants did not extinguish their right to the return of the security deposit under section 24(1) of the *Act*.

I accept the testimony of the Landlord that she did not provide the Tenants with a second opportunity to do a move-out inspection on the approved form. I find the Landlord did not comply with section 17(2)(b) of the *Residential Tenancy Regulation* (the “*Regulations*”) which requires this. Therefore, I find the Landlord also did not comply with section 35(2) of the *Act*. As a result, I find the Tenants did not extinguish their right to the return of the security deposit under section 36(1) of the *Act*.

Based on the testimony of the parties, I find the Landlord did not extinguish her right to claim against the security deposit under section 24(2) of the *Act*.

However, the Landlord did fail to comply with section 35(2) of the *Act* and therefore did extinguish her right to claim against the security deposit for damage to the unit under section 36(2)(a) of the *Act*.

The parties agreed the Landlord received the Tenants’ forwarding address in writing, via email, February 2, 2018. The Landlord did not file the Application to keep the security deposit until May 2, 2018. This is outside the 15-day time limit set out in section 38(1) of the *Act*. However, both the Landlord and Tenant J.D. said Tenant J.D. agreed in writing that the Landlord could keep the security deposit in his January 31, 2018 email. Therefore, the Landlord was permitted under section 4(a) of the *Act* to keep the deposit. I note that Tenant J.D. agreed the Landlord could keep the deposit as “liquidated damages” and not for damage to the unit. Therefore, section 38(5) of the *Act* did not preclude the Landlord from retaining the deposit. The Landlord did not have to repay

the deposit or apply for dispute resolution to retain it within 15 days as required by section 38(1) of the *Act* in the circumstances.

At the hearing, Tenant J.D. agreed the Landlord could keep the security deposit but not for cleaning. Based on this, the Landlord is authorized to keep the \$1,137.50 security deposit towards her request for rent for February, March and April 2018.

Rent for February, March, April 2018

There is no issue that the Tenants breached the tenancy agreement and *Act* by ending the fixed term tenancy early. The Landlord said she lost rent for February, March and April 2018 given this breach and her inability to re-rent the unit until May 1, 2018.

Tenant J.D. raised an issue with the Landlord's assertion that she did not re-rent the unit until May 1, 2018 given her email stating the unit was re-rented for April 1, 2018. The Landlord said the tenancy for April 1, 2018 did not actually materialize.

As applicant, the Landlord must prove her claim. I am not satisfied that the Landlord was unable to rent the unit until May 1, 2018 given her email stating the unit was re-rented for April 1, 2018 and the absence of evidence supporting the assertion that it was not actually re-rented until May 1, 2018. I am only able to find the Landlord lost rent for February and March 2018 due to the Tenants' breach.

Tenant J.D. testified that the unit was listed for rent at \$2,550.00. He did not know how long it was listed for at this price but pointed to an email dated January 22, 2018 indicating the rent had been lowered to \$2,275.00. The Landlord testified that she never listed the unit for \$2,550.00. She said it was listed at \$2,375.00 for one week and \$2,275.00 for the remainder of the time. Neither party submitted evidence of the listings to support their position.

As applicant, the Landlord must prove her claim. I am not satisfied that the Landlord listed the unit for \$2,275.00 or \$2,375.00 prior to January 22, 2018 given the conflicting testimony and absence of evidence to support her position. However, the January 22, 2018 email seems to indicate the unit was listed for \$2,275.00 around that date. I did not understand Tenant J.D. to dispute this. Therefore, I find the Landlord reasonably mitigated her loss as of January 22, 2018. I cannot find that the Landlord is entitled to rent for February given I am not satisfied that she mitigated her loss prior to January 22, 2018. However, I am satisfied that the Landlord is entitled to compensation for March rent in the amount of \$2,275.00.

Cleaning costs

Based on the photos, I accept there were parts of the unit that required some cleaning upon the Tenants vacating. I do not rely on the Condition Inspection Report as proof of the state of the unit upon move-out because the Tenants did not participate in the inspection and the Landlord did not comply with the *Regulations* or *Act* in relation to providing the Tenants with opportunities for the inspection. Based on the photos, I am satisfied the Tenants failed to leave parts of the unit reasonably clean upon vacating and therefore breached section 37 of the *Act*.

However, the Landlord has not satisfied me that the cleaning costs claimed are justified. I am not satisfied based on the Landlord's testimony alone that the unit required five hours of cleaning. The photos do not support this. The cleaning receipt does not indicate that five hours of cleaning was done. Nor am I satisfied that \$800.00 is a reasonable amount for the cleaning that appears to have been necessary from the photos. I am not satisfied from the evidence submitted that the blinds and windows needed to be cleaned or that it usually costs \$350.00 to \$450.00 to clean them. The average cost of cleaning is \$20.00 to \$25.00 per hour. At this rate, the \$800.00 would amount to at least 32 hours of cleaning.

Based on the evidence provided, I am only satisfied that some cleaning of the unit was required. I am unable to determine what a reasonable number of hours or cost for this cleaning would be based on the evidence. Therefore, I award the Landlord nominal damages of \$25.00 for cleaning costs.

In summary, the Landlord is entitled to compensation in the amount of \$2,275.00 for March rent and \$25.00 for cleaning costs.

Given the Landlord was partially successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. In total, the Landlord is entitled to \$2,400.00.

Tenant J.D. agreed the Landlord could keep the \$1,137.50 security deposit. The Landlord is entitled to a further Monetary Order in the amount of \$1,262.50.

Conclusion

The Application is granted in part. The Landlord is entitled to compensation in the amount of \$2,275.00 for March rent and \$25.00 for cleaning costs. The Landlord is awarded reimbursement for the \$100.00 filing fee.

Tenant J.D. agreed the Landlord could keep the \$1,137.50 security deposit.

The Landlord is entitled to a further Monetary Order in the amount of \$1,262.50. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 09, 2018

Residential Tenancy Branch