



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNSD, FFL; MNDCT, FFT

Introduction

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

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 63 minutes. The landlord and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant's agent confirmed that he had permission to speak on behalf of the tenant named in this application, at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant's agent stated that the tenant did not receive the landlord's second written evidence package, which the landlord said was sent to the tenant by registered mail on June 19, 2018. The landlord provided a Canada Post tracking number verbally during the hearing. I notified both parties that in accordance with sections 88 and 90 of the *Act*, I found that the tenant was deemed served with the landlord's second written evidence package and I considered it at the hearing and in my decision.

The landlord stated that he did not receive the tenant's written evidence package. The tenant provided a Canada Post receipt and tracking number with his application to confirm that it was sent to the landlord on December 7, 2017, by way of registered mail. I informed both parties that in accordance with sections 88 and 90 of the *Act*, I found that the landlord was deemed served with the tenant's written evidence package and I considered it at the hearing and in my decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2016. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. The tenant was responsible for 75% of the total hydro and gas utility costs. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant did not give the landlord written permission to keep any amount

from the security deposit. The landlord filed his application to keep the tenant's security deposit for rent and damages on December 5, 2017.

The tenant's agent stated that the tenant provided a forwarding address to the landlord by way of a letter that was delivered in person on December 4, 2017. The landlord said that he received a forwarding address from the tenant on December 5, 2017, by way of posting to his door.

The landlord seeks unpaid rent of \$1,200.00 from the tenant for November 2017 and to recover the \$100.00 application filing fee. He said that the tenant verbally agreed to pay \$100.00 more per month in rent. He also seeks \$105.00 for carpet cleaning, \$362.25 for a broken window, and \$150.00 for garbage disposal, after the tenant vacated the rental unit.

The tenant seeks \$18,224.85 for various clothing, appliances, other items and stress caused by the landlord. The tenant's agent testified that the landlord locked the tenant out of the rental unit while he was still moving his belongings. The tenant's agent said that the tenant was informed by the police that the landlord had put the tenant's items on the road but the tenant was unable to retrieve the items because he did not have a moving truck at that time. He stated that the tenant did not purchase renter's insurance for the rental unit. The tenant's agent explained that the items left outside were either destroyed by the rain or stolen. He maintained that the tenant suffered from depression due to the landlord's actions so prescription receipts for depression medication were included in the tenant's claim.

The landlord agreed that he changed the locks on December 1, 2017, because he said he had new tenants moving into the rental unit that day and they asked him to change the locks. He said that the tenants were mostly moved out except for a mattress box spring and some other items that were left behind. The landlord stated that he put plastic on the tenant's washer and dryer and left it outside and then in the shed of the rental property.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I award the landlord \$1,100.00 in rent for November 2017, \$176.00 in hydro costs, and \$226.00 in gas costs. The tenant agreed to pay for these costs during the hearing. I do not award the landlord \$1,200.00 for November 2017 rent because I find that the landlord did not issue a legal notice of rent increase in the proper form, nor did he obtain a written agreement from the tenant to pay a higher amount of rent from the \$1,100.00 indicated in the parties' written tenancy agreement.

I award the landlord \$105.00 in carpet cleaning costs. The landlord provided an estimate for this amount. The tenant's agent agreed that the tenant did not clean the carpet before vacating the rental unit. As per Residential Tenancy Policy Guideline 1, tenancies lasting one year or longer require the tenant to clean the carpet prior to vacating.

I award the landlord \$362.25 for the broken window at the rental unit. The landlord provided a photograph of the broken window as well as an estimate indicating the window has to be replaced for the above amount. The tenant claimed that he did not know what happened or when but he knew the window was broken sometime during the tenancy. I find that if the window broke during the tenancy and the tenant failed to notify the landlord that a repair was required, the tenant is responsible for this cost.

I dismiss the landlord's claim for \$150.00 to dispose of the garbage at the rental unit. The landlord did not provide an estimate or quote for this cost, he simply made up the cost based on what he thought it would cost him to personally dispose of the garbage.

I order the landlord to retain the tenant's entire security deposit of \$600.00 in partial satisfaction of the monetary award.

As the landlord was mainly successful in his application, I find that he is entitled to recover the \$100.00 application filing fee from the tenant.

Tenant's Application

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find that the tenant is entitled to \$300.00 in nominal damages from the landlord for a loss of quiet enjoyment and loss of personal belongings. I find that the tenant was unable to properly substantiate the amount of \$18,224.85 for lost items and stress, as many receipts were not provided or did not include a proper description of the items purchased. However, I find that the tenant's legal rights under sections 28, 29 and 30 of the *Act* and sections 24 and 25 of the *Regulation* were violated. I find that the tenant was locked out of the rental unit by the landlord before he had fully moved his belongings. The landlord agreed that he changed the locks and was aware that the tenant still had items in the rental unit and chose to move some items outside. I find

that the tenant suffered the above losses due to the landlord's illegal actions of denying the tenant access and failing to safeguard the tenant's items. However, I also find that the tenant could have retrieved his items when he was informed by the police and could have purchased renter's insurance to cover various insurance costs, and by failing to do both, he did not properly mitigate his damages.

Since the tenant was mainly unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$600.00.

I issue a monetary order in the landlord's favour in the amount of \$667.25 against the tenant. The landlord's monetary order of \$1,667.25 total has been reduced by the tenant's monetary award of \$300.00 and the offset of the tenant's security deposit of \$600.00. The tenant must be served with this Order as soon as possible. Should the tenant 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 for garbage disposal of \$150.00 and the tenant's application to recover the \$100.00 application filing fee, are both dismissed without leave to reapply.

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: July 25, 2018

Residential Tenancy Branch