



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for damage or compensation, a Monetary Order for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for this application.

Both Landlords and both Tenants were present for the duration of the teleconference hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package by registered mail. The Landlords confirmed receipt of a copy of the Tenants’ evidence.

Although the Landlords stated that a copy of their evidence was included in the package they sent by registered mail, the Tenants stated they did not receive any of the Landlords’ evidence. Due to the dispute regarding the exchange of evidence, the evidence was reviewed during the hearing and it was confirmed that the Landlord’s evidence included only documents that the Tenants would have seen previously, such as the tenancy agreement and the Tenants’ notice to end the tenancy.

As such, I find that accepting the Landlords’ evidence would not prejudice either party and the Landlord’s evidence will therefore be included in this decision. The parties were informed during the hearing that all evidence would be considered.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for damages or compensation?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to retain the security deposit towards compensation owed?

Are the Landlords entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2017 and was for a fixed term of one year, set to end on July 31, 2018. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. A security deposit in the amount of \$500.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details of the tenancy.

The Landlords testified that on May 14, 2018 they received a note from the Tenants advising them that they would be moving out on May 16, 2018. As the note did not include a signature, the date, or the address of the rental unit, the Landlord posted a note on the Tenants' door requesting official notice to end the tenancy.

The Landlord testified that later on May 14, 2018, they received a written letter from the Tenants advising that their move-out date would be May 16, 2018. The Tenants also provided their forwarding address at this time.

A move-out condition inspection was arranged with the Tenants for May 16, 2018. The Landlords stated that upon move-out, many areas of the rental unit were uncleared. The Landlords testified that this included the oven and the bathroom, and that the dryer vents were filled with lint that needed cleaning. The Landlords stated that the Tenants also left a couch in the rental unit at the end of the tenancy.

The Landlords provided testimony that the Tenants did not sign the Condition Inspection Report, but signed the back of the form stating that the Landlords could keep their full security deposit of \$500.00 as compensation for cleaning and other expenses incurred from ending the fixed term tenancy early.

The Landlords were originally claiming compensation for the last utility bill in the amount of \$150.00. However, during the hearing, they confirmed that this bill had since been paid by the Tenants and therefore they are no longer seeking this compensation.

The Landlords testified that they were able to re-rent the unit during the month of May 2018 for the same rent the Tenants were paying. They are seeking compensation for one month of rental income in the amount of \$1,000.00 due to the Tenants breaking a fixed term tenancy and to retain the \$500.00 security deposit as agreed to by the Tenants.

As the Tenants testified that they were not able to stay in the rental unit any longer due to the presence of mould, the Landlords responded that there was no mould noticed at the beginning or end of the tenancy. During the tenancy, the Landlords replaced a toilet that was leaking in the rental unit, and believe some mildew may have arisen as a result.

The Landlords advised the Tenants during the tenancy not to pack items too close together in the closets, which they believe lead to the presence of some mildew on some of the Tenants' items during the tenancy.

The Tenants testified that they provided short notice to move out of the rental unit due to the presence of mould and the risk to their health. They submitted that in April 2018, they provided verbal notice to the Landlords that they would be finding a new place to live. They provided written notice on May 14, 2018 and vacated the rental unit on May 16, 2018.

The Tenants agreed that they left a couch behind and submitted a text message exchange regarding the couch. They submitted that the Landlords told them to not come near the property again or the police would be called and therefore they did not feel comfortable going back. They stated this is why they did not want to return to get the couch.

The Tenants testified that they cleaned the rental unit thoroughly and submitted photos taken May 16, 2018 into evidence. They admitted that the stove was not cleaned as thoroughly as it could have been, but was still cleaned. They stated that they cleaned mould out of the window sills with Windex.

On April 17, 2018, the Tenants emailed the Landlord regarding the leaking toilet and the mould on the wall behind the toilet. They testified that the toilet was replaced while they were away on vacation and the mould wiped from the wall. However, when they were moving they also found mould on some items in the home, such as a guitar case, a purse and the back of a photo frame. Photos of the items were submitted into evidence.

One of the Tenants testified that they experienced respiratory and sinus infections from mould exposure and it was due to the mould that they needed to vacate the rental unit prior to the end of their fixed term tenancy. The Tenants confirmed that they vacated the rental unit on May 16, 2018 and paid the full rent for May 2018.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

The Tenants provided notice to end the tenancy on May 14, 2018, vacated the rental unit on May 16, 2018 and paid rent until May 31, 2018. I refer to Section 45(2)(b) of the *Act* which states that a fixed term tenancy cannot be ended before the end of the fixed term.

However, I also note that Section 45(3) of the *Act* states that a fixed term tenancy can be ended early if a landlord has breached a material term of the tenancy. Based on the testimony of the Tenants who stated they ended the tenancy due to mould, I look to the evidence to determine if the tenancy was ended due to a breach of the tenancy agreement by the Landlord.

In accordance with Section 45(3), to end a fixed term tenancy due to a breach by the landlord, written notice of the issue must be provided to the landlord with a reasonable timeline in which to correct the issue. If the concerns are not addressed within the timeline provided, then the tenant may end the tenancy.

I find insufficient evidence to establish that written notice regarding the mould, with a specific deadline in which to address the concerns was provided to the Landlords. As such, I cannot determine that the tenancy was ended due to a breach of a material term and instead, I find that the Tenants were not in compliance with the *Act* when they ended their fixed term tenancy early.

Section 7(1) of the *Act* states when a party is not in compliance with the *Act*, the other party must be compensated for any losses that occur. I also note that Section 7(2) of the *Act* states that the party claiming the loss must do what is reasonable to minimize their losses.

The Landlords are claiming \$1,000.00 compensation for the loss of rental income for June 2018. However, the Landlords provided testimony that they re-rented the unit in May 2018, after the Tenants moved out.

As the Landlords had new tenants in the rental unit paying \$1,000.00 in rent for June 2018, I find that they did what was reasonable to minimize their losses, such that they did not experience a loss of \$1,000.00 in June 2018. Therefore, I decline to award compensation for loss of rental income, as I determine there was no loss.

The Landlords have also claimed to keep the \$500.00 security deposit. Although the Condition Inspection Report was not submitted into evidence, I accept the testimony of both parties regarding the security deposit. Both parties provided testimony that the Tenants agreed to the Landlord withholding the security deposit towards compensation.

Due to a lack of evidence before me, I am not able to determine the exact expenses of the Landlord for cleaning of the rental unit, disposal of the couch or other damages.

However, as the parties agreed that permission to withhold the full security deposit was provided in writing on the back of the Condition Inspection Report, I find that I do not need to determine the specific amounts. I accept the testimony of the parties that they agreed to place a value of \$500.00 on the losses that occurred upon the Tenants vacating the rental unit. Section 38(4)(a) of the *Act* allows a landlord to retain an amount from the security deposit that the tenant has agreed to in writing.

As the Landlords were not awarded a monetary claim beyond what was previously agreed upon at the end of the tenancy, I decline to award the filing fee paid for this application. The Landlords are allowed to retain the security deposit in an amount of \$500.00, as agreed to by the Tenants in accordance with Section 38(4)(a) of the *Act*.

Conclusion

The Landlords are entitled to retain the security deposit in the amount of \$500.00 pursuant to Section 38(4) of the *Act*.

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