



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlord applied for monetary compensation, compensation for damages against the security deposit, and for unpaid rent. The Tenant applied for monetary compensation and for the return of the security deposit. Both parties also applied for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and an agent (the “Landlord”) were present for the duration of the teleconference hearing, as was the Tenant. The agent for the Landlord provided the majority of the testimony on behalf of the Landlord who provided his verbal permission for her to do so.

The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served in accordance with Sections 88 and 89 of the *Act*.

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 *Residential Tenancy Branch 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

Is the Landlord entitled to a Monetary Order for compensation, damages, or unpaid rent?

Should the Landlord be allowed to retain the security deposit towards any compensation owed?

Is the Tenant entitled to a Monetary Order for compensation?

Is the Tenant entitled to the return of the security deposit?

Should either party be awarded 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 June 6, 2017 and was for a fixed term of one year, set to end on May 31, 2018. Monthly rent was \$2,200.00 and a security deposit of \$1,100.00 was paid at the outset of the tenancy. The parties confirmed that the security deposit has not been returned to the Tenant. The keys to the rental unit were returned to the Landlord on March 3, 2018.

The Tenant stated that when she moved in, she paid \$2,200.00 in rent for June 2017, despite moving in on June 6, 2017. She testified that there was an agreement with the Landlord regarding an overpayment of rent, calculated at \$413.00 for the first 6 days of June 2017. She stated that it was her understanding that \$413.00 would be returned at the end of the tenancy, or that she would be able to stay additional days at the end of the tenancy to compensate for the overpayment.

The Landlord stated that there was no arrangement regarding an overpayment of rent by the Tenant for June 2017. The Landlord submitted that the rental unit was held for the Tenant for June 2017, despite the Tenant not moving in until June 6, 2017.

The Landlord has claimed \$1,680.00 for the repair of damages to the rental unit. He submitted photos of the damage into evidence and provided testimony regarding what damage was present at the end of the tenancy. The Landlord stated that there was damage to the walls and the entrance door, as well as damage from a curtain rod

installed with heavy screws in the main living area. The Landlord stated their belief that the Tenant had installed a curtain to turn a two-bedroom unit into three.

The Landlord provided testimony that everything was new at the beginning of the tenancy, including that the unit had been newly painted. The Landlord provided testimony that he walked through the unit at move-out with the Tenant and the property manager, but that no inspection report was completed. He stated that an inspection report was also not completed at the start of the tenancy.

The Landlord submitted a quote in the amount of \$1,680.00 for the repairs completed in the unit. Although the document states that it is a quote, the Landlord testified that this amount is the invoice for work completed. The quote was dated March 7, 2018 and was for repair of the walls, as well as painting.

The Tenant was in agreement that no Condition Inspection Report was completed at move-in or move-out. She stated that when moving out, she asked the Landlord 3 times in writing to have the inspection, but that he never responded. The Tenant was not in agreement as to the Landlord's claims of damages in the rental unit.

She stated that the rental unit was not newly painted when she moved in. She also denied converting the unit into three bedrooms, and instead stated that the curtain was installed to create more storage.

The Tenant provided testimony that she gave notice by email to the Landlord on January 19, 2018 notifying him that she would be moving out by February 28, 2018. The Landlord responded on January 20, 2018 and stated the following:

I consider this email as your letter of rental termination that a tenant (you) provide the landlord (me) with. You are asking to move out of my property on February 28th and I agreed with it. (Reproduced as written)

The email exchange was submitted into evidence.

The Landlord stated that even though he agreed that the Tenant could move out on February 28, 2018, she was still breaking a fixed term tenancy. He further testified that the relationship between himself and the Tenant had deteriorated, and she had blocked his phone number, making communication challenging.

The Tenant confirmed that she blocked the Landlord's number, as she said that he was contacting her early in the morning. She noted that the Landlord was still able to communicate with her through email.

The Landlord has also claimed for compensation for February 2018 and March 2018 rent in a total amount of \$2,611.00. The Landlord stated that there was a Monetary Order from a previous arbitration decision. A Monetary Order, dated February 28, 2018, was submitted into evidence ordering the Tenant to pay the Landlord an amount of \$1,650.00.

The Landlord submitted proof of an email money transfer into evidence showing a payment from the Tenant on March 1, 2018 in the amount of \$1,239.99. This leaves \$411.00 owing from the Monetary Order, which he states is the remainder of money owing for February rent.

An Order of Possession was also granted to the Landlord. The Order of Possession, dated February 28, 2018, was submitted into evidence and states that the Tenant must vacate the rental unit 2 days after service on the Tenant.

The Landlord is also claiming \$2,200.00 for March 2018 rent. During the hearing, the Landlord stated that they would also like rent money for April and May 2018, which would be until the end of the original fixed term tenancy. The Landlord submitted a written document explaining their request for an additional two months of rent, but it does not seem that an amendment to their Application for Dispute Resolution was submitted.

The Landlord provided testimony that they began advertising the unit for re-rental after the Tenant notified them that she would be moving out. They conducted the first showing of the unit on February 17, 2018 but were unable to secure a new Tenant until June 15, 2018. The tenancy agreement signed by the new tenant was submitted into evidence. The Landlord stated that they also advertised through Facebook and through a property management company and advertised the rental unit for the same monthly rent that the Tenant was paying.

The Tenant submitted that she does not owe rent to the Landlord, as he agreed to her moving out on February 28, 2018, in an email dated January 20, 2018. She agreed that she did not stay until the end of the fixed term tenancy but stated that it was a mutual

agreement to end the tenancy, which is why the rental unit was listed for re-rental on January 20, 2018.

The Tenant stated that she withheld \$413.00 from the Monetary Order that she paid due to her overpayment at the start of the tenancy.

The Landlord submitted that even though he agreed that the Tenant could move out, the Tenant is still breaking a fixed term tenancy by doing so.

The final monetary claim of the Landlord is for \$4,500.00, which is 9 months at \$500.00 per month for the Tenant illegally subletting the rental unit. The Landlord stated that the Tenant was not allowed to sublet the rental unit and did not ask for permission to do so.

The Landlord stated that they were unsure of how much rent the Tenant was charging to the three subtenants, but they were also aware that she was renting the parking space to another resident of the building for \$40.00 per month. The Landlord stated that they have estimated their loss at \$500.00 per month for a total of \$4,500.00.

The Landlord submitted a letter from the strata into evidence in which people other than the Tenant were warned regarding not following the rules at the pool. A letter from a potential new tenant was also submitted, stating that when viewing the home, there was a make-shift bed behind the curtain in the living room and people other than the Tenant allowed access to the unit.

The Tenant testified that she did not sublet the rental unit, and instead that she had two friends staying with her from out of town. She submitted that at the time the Landlord wanted to show the unit to a potential new tenant, she told the Landlord that she was not available, but that her friends would allow access to the rental unit. She also stated that there was no evidence about her renting out the parking space.

The Tenant has applied for the return of her security deposit in the amount of \$1,100.00. She stated that she has not received any amount from the security deposit back, and that she did not provide permission for the Landlord to withhold any amount.

The Tenant has also claimed \$200.00 as compensation for the Landlord not allowing her to move on February 27, 2018. The Tenant submitted that she had arranged with the movers to move out on February 27, 2018. However, when they arrived, the Tenant

stated that the Landlord created a situation whereby the movers were unable to complete the job.

The Tenant submitted that the Landlord was yelling and telling the movers that they could not move her as she has not paid her rent and that he was still waiting for a decision from the Residential Tenancy Branch. The Tenant stated that she called the police and although the movers waited, they eventually had to leave and charged her \$200.00 for their time. The Tenant stated that she paid them cash and although she received a receipt, she did not submit the receipt into evidence.

As the movers were unable to complete the move on February 27, 2018, the Tenant stated that she was unable to find new movers until March 3, 2018, which is why she moved out that day.

The Landlord stated that he did not let the Tenant move on February 27, 2018 as he did not have the Tenant's forwarding address and therefore no way to contact her after she moved out of the unit. He also noted that since his phone number was blocked, he was concerned that he would not be able to reach her, particularly given that she owed him rent. The Landlord submitted that he was not yelling and that he had the building manager present as a witness, as he was concerned about what would happen or what he would be accused of.

The parties agreed that the Tenant's forwarding address was provided to the Landlord on February 27, 2018.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find the following regarding each of the claims of the parties:

Damages: The Landlord has claimed \$1,680.00 for damages to the rental unit and would like to withhold the security deposit towards the amount owing. I refer to Section 38(5) of the *Act* which states the following:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36
(2) *[landlord failure to meet end of tenancy condition report requirements]*.

As the Landlord did not complete Condition Inspection Reports at move-in and move-out in accordance with Sections 23 and 35 of the *Act*, I find that Sections 24 and 36 apply. Therefore, the Landlord has extinguished his right to claim against the security deposit.

The parties were not in agreement as to whether the damages were caused by the Tenant during the tenancy. Based on the conflicting testimony of the parties, and in the absence of a Condition Inspection Report that would establish the condition of the rental unit at the beginning and end of the tenancy, I find that I cannot determine that the Tenant was responsible for any damage to the rental unit.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- 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.

Without evidence of the condition of the rental unit at the beginning of the tenancy, I cannot determine that the Tenant was in breach of the *Act*, by not maintaining the condition of the rental unit. As such, I dismiss the Landlord's claim for damages.

Unpaid rent: The Landlord has claimed \$2,611 for unpaid rent for February and March 2018, as well as requested an additional \$4,400.00 for the months of April and May 2018. However, I do not find evidence of an amendment to change the monetary claim of the Landlord on the Application for Dispute Resolution.

Regardless of the amount claimed, I find that I cannot make a determination on the \$411.00 outstanding from February 2018 rent. As the parties were in agreement that this is an amount outstanding from a Monetary Order dated February 18, 2018, I cannot re-order that this amount be paid. A Monetary Order may be enforced through small claims court.

As for the unpaid rent for March 2018 due to the Tenant breaking a fixed term agreement, I look to Section 44(1)(c) which states that a tenancy may end if the landlord and tenant agree in writing. I accept the email exchange submitted into evidence in which the Tenant states her intent to move out on February 28, 2018 and the Landlord responds with his acceptance on January 20, 2018.

As such, I find that the parties entered into a mutual agreement to end the tenancy on February 28, 2018. Although the Tenant did not vacate the rental unit until March 3, 2018, I do not find that she is responsible for paying rent into March 2018. Although they did not agree on how it occurred, the parties were in agreement that the Landlord prevented the Tenant from moving out on February 27, 2018.

I find it plausible that the Tenant would be unable to book movers on such short notice and instead was not able to find movers until March 3, 2018, causing her to keep possession of the rental unit into March 2018.

I also note that in accordance with Section 7 of the *Act*, a party has a responsibility to do what is reasonable to minimize their losses. The Landlord testified as to his efforts to re-rent the unit, and posted the unit for re-rental in January 2018.

Given the low rental availability, I find it unlikely that it took until June 2018 to find a new tenant in a desirable area of the province. As such, and based on insufficient evidence to prove otherwise, I find it unlikely that the Landlord took all reasonable steps to minimize the potential loss of rental income.

However, regardless on the steps taken to minimize loss of rental income, I find that the fixed term tenancy ended through a mutual agreement. Based on the above analysis, I dismiss the Landlord's claims for unpaid rent.

Compensation for illegal sublet: The Landlord has claimed \$4,500.00 as compensation for the Tenant illegally subletting the rental unit, as well as the parking space.

I note that the burden of proof to establish a claim is on the party filing the claim. Due to the conflicting testimony of the parties, I look to the evidence of the Landlord to prove, on a balance of probabilities, that the Tenant was subletting the apartment. I do not find

a letter from the strata nor a letter from a potential new tenant to be compelling evidence to prove that the Tenant was subletting the unit.

Both letters establish that there were other people in the rental unit, but as the Tenant stated that these were friends who were staying with her, there is no proof that they were subletting the unit from the Tenant, and not just guests.

I also note that in the application of the above mentioned four-part test for compensation, the Landlord has not proven that the Tenant breached the *Act* thus causing a loss for the Landlord. I also find that the value of the loss that was experienced has not been proven.

Therefore, I dismiss the Landlord's claim for compensation in the amount of \$4,500.00

Return of security deposit: The Tenant has applied for the return of her security deposit in the amount of \$1,100.00.

In accordance with Section 38(1), a landlord has 15 days from the later of the date the tenancy ends, or the forwarding address is provided in writing to return the deposit or file a claim against it. However, as the Landlord extinguished his right to claim against the deposit by not conducting Condition Inspection Reports at move-in or move-out in accordance with Sections 23 and 35 of the *Act*, he did not have a right to withhold the deposit. Instead, I find that the Landlord was required to return the security deposit within 15 days of March 3, 2018, when the tenancy ended. A security deposit is held in trust for a tenant and must not be kept by a landlord unless they have the right to do so under the *Act*.

As the Landlord did not have a right to withhold the security deposit, I find that Section 38(6)(b) applies and the Landlord must pay the Tenant double the security deposit, due to not returning it within 15 days. Therefore, the Tenant is awarded \$2,200.00 for the return of double her security deposit.

Compensation for movers: The Tenant is seeking compensation in the amount of \$200.00 for the amount she paid the movers on February 27, 2018 when she stated that the Landlord would not allow her to move.

However, as stated in the four-part test, I do not find that the Tenant provided proof of the value of her loss, by not providing the receipt for the amount paid. As such, I find that I cannot award the Tenant compensation and I dismiss her claim for \$200.00.

Filing fees: Both parties applied for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenant was successful with her Application and was awarded the security deposit which it was determined that the Landlord did not have a right under the *Act* to retain. Therefore, the Tenant is awarded the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Tenant is awarded a Monetary Order in the amount of \$2,300; \$2,200.00 for the return of double the security deposit pursuant to Section 38(6) of the *Act*, and \$100.00 for the recovery of the filing fee, pursuant to Section 72 of the *Act*.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$2,300.00** for the return of double the security deposit and the recovery of the filing fee for this application. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

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: October 15, 2018

Residential Tenancy Branch