



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that on or about July 14, 2018, the tenant received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 13, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain the tenant's deposits in partial satisfaction of the monetary award sought by the landlord? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On October 12, 2017, both parties signed a fixed term Residential Tenancy Agreement (the Agreement), which was to cover the rental period from October 8, 2017 until July 31, 2018. Monthly rent was set at \$1,150.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$575.00 security deposit and \$575.00 pet damage deposit paid in October 2017. The parties agreed that they participated in a joint move-in condition inspection at the beginning of this tenancy. No joint move-out condition inspection occurred as the tenant left the rental unit without notifying the landlord on June 28, 2018.

The parties agreed that the tenant spoke with the landlord in mid-May 2018 to advise that the tenant was planning to vacate the rental unit earlier than the July 31, 2018 date identified in the Agreement. When they discussed this matter, the landlord requested that the tenant put the notice to end this tenancy early into an email, which the tenant sent the landlord on or about May 29, 2018. The tenant advised that they were planning to end this tenancy by June 30, 2018, and proposed that the landlord enter into an AirBnB short term rental arrangement for July 2018, the last month of the fixed term tenancy. The landlord indicated that they would only consider such a proposal if the tenant were to vacate the premises within a few days, so that the landlord could try to rent the suite out to short term tenants for June and July 2018. The landlord gave undisputed sworn testimony that the tenant was aware that the landlord could not rent out the premises to tenants for August of any year as the landlord's daughter visits the landlord at the property every August. Although the parties discussed proposals identified by the tenant to resolve this matter, the parties did not reach an agreement whereby the landlord would waive the payment of any portion of the rent that was required from the tenant as per the terms of their Agreement.

The landlord gave undisputed sworn testimony that in late June or July 2018, they began trying to rent out the premises for September 2018. The landlord said that they obtained a tenant for this rental suite who took possession of the rental unit on September 8, 2018.

The tenant did not dispute the landlord's assertion that the tenant did not pay any rent for July 2018. The tenant abandoned the rental unit on June 28, 2018.

The landlord's application for a monetary award of \$1,150.00 was for the recovery of unpaid rent, which the landlord considered owing for the last month of this fixed term tenancy. The landlord requested authorization to retain the deposits and to recover the \$100.00 filing fee for this application. The tenant did not believe that they should be

bound by the terms of the Agreement and that the landlord should have accepted the tenant's proposal to use a portion of the tenant's deposits and return the remainder of that deposit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

I find that the tenant was in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the July 31, 2018 date specified in that Agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for July 2018, the last month of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord was left with little opportunity to re-rent the premises for July 2018, when it only became apparent that the tenant was not intending to remain in the rental unit when the tenant abandoned the rental unit on June 28, 2018. Although the tenant's departure on that date was in line with information previously provided to the landlord, I give considerable weight to the landlord's undisputed sworn testimony and written evidence that they never rent this suite out to others in August because the landlord's daughter stays in the rental unit that month. As such, I am satisfied that the landlord was not in a position whereby they could reasonably be expected to re-rent this basement suite out to others for the month

of July 2018. As such, I find that the landlord has not contravened the requirements of section 7(2) of the *Act*. Therefore, I allow the landlord's application for a monetary award of \$1,150.00, the amount of unpaid rent owed by the tenant for July 2018.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

As the landlord applied to retain the deposits shortly after this tenancy ended, I allow the landlord to retain these deposits in partial satisfaction of this monetary award.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$100.00 under the following terms, which enables the landlord to recover unpaid rent owing at the end of this tenancy and the filing fee for this application, and to retain the tenant's deposits:

Item	Amount
Unpaid July 2018 Rent	\$1,150.00
Less Tenant's Pet Damage and Security Deposits (\$575.00 = \$575.00 = \$1,150.00)	-1,150.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$100.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 29, 2018

Residential Tenancy Branch