



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL – S, FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. A Monetary Order in the sum of \$2500 for non-payment of rent.
- b. An Order to retain the security deposit.
- c. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to the forwarding address provided by the tenant on July 20, 2018,

Issue(s) to be Decided

The issues to be decided are as follows:

- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2017 and end on June 30, 2018. The rent is \$2500 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1250 at the start of the tenancy.

The landlord was attempting to sell the rental property. The tenant advised the landlord that even if she found a buyer she could not sell the property prior to the end of June 2018.

The tenant testified that on May 22, 2018 she gave the landlord written notice that she was ending the tenancy on June 30, 2018 along with other mail. The landlord testified she never received that written notice. The landlord further testified that she received that notice by e-mail a few days before the end of June after the landlord became aware the tenant had vacated but this was not within the required on month notice period.

The parties conducted a outgoing condition inspection on June 29, 2018. Neither party provided a copy of that document. However, I accept the landlord's evidence that the tenant agreed in writing that she could keep \$450 of the security deposit to cover clean up and other expenses.

Analysis - Monetary Order and Cost of Filing fee

After carefully considering all of the evidence I determined that landlord failed to prove she is entitled to \$2500 for loss of rent for July for the following reasons:

- I accept the Tenant's evidence that she gave the landlord written notice that she was ending the tenancy at the end of June. As a result on that basis alone there are no grounds for claiming loss of rent for July.
- Further I determined the landlord failed to establish that she acted reasonably to lessen her loss. Section 7(2) of the Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord testified she was not able to re-rent the rental unit until November 2018. However she was very unclear about what efforts she made to advertise the rental unit for rent after the tenant vacated. She acknowledged she was still in the process of attempting to sell the rental unit in July. The landlord failed to provide documentary evidence as to when and with whom she started to advertise that the rental unit was for rent. I determined the landlord failed to prove she acted reasonably to minimize the loss.

As a result I ordered that the application of the landlord for loss of rent for July and the cost of the filing fee be dismissed.

Security Deposit

I determined the security deposit was originally the sum of \$1250. However, I determined on the basis of the oral testimony of the parties that they agreed in writing in the outgoing condition inspection report that the landlord could keep \$450 of the security deposit.

I ordered the landlord shall retain \$450 of the security deposit. The Act provides that where an arbitrator has determined the landlord claim is less than the security deposit the arbitrator shall award the balance of the security deposit to the tenant. I further ordered that the landlord pay to the Tenant the balance of the security deposit in the sum of \$800.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the applicant fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: November 02, 2018

Residential Tenancy Branch