



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** MNRL, FFL
 Tenant: MNDCT

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- a monetary award for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Landlord J.S. and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, call witnesses and to cross-examine one another. Landlord J.S. (the landlord) stated that they were representing the interests of both landlords.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

Both parties acknowledged receiving each other's Application for Dispute Resolution and evidence. In accordance with sections 88 and 89 of the *Act*, I find that each party was duly served with the other's Application for Dispute Resolution (the Application) and evidence.

Issue(s) to be Decided

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

Is the landlord entitled to authorization to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

Written evidence was provided that this fixed term tenancy began on April 01, 2018, with a monthly rent of \$1,100.00 due on the first day of each month, with a vacate date of April 01, 2019. The landlord and tenant agreed that the landlord returned the tenant's security deposit in full.

The landlord provided in evidence:

- A copy of an e-mail exchange between the landlord and the tenant in which the landlord asks for a photographer to enter the rental unit to take pictures on May 18, 2018. The tenant then questioned the landlords about their intention to sell the house on May 20, 2018, and then on May 23, 2018, the tenant states that they want to talk about the landlords selling their home and about the photographer moving the tenant's belongings when they were in the rental unit;
- A copy of an e-mail from the tenant to the landlord dated May 30, 2018 in which the tenant states that they have provided their notice to end tenancy effective as of June 08, 2018. The notice to end tenancy indicates that the tenant is ending the tenancy due to a breach of a material term of the tenancy agreement and breach of quiet enjoyment;
- A copy of an e-mail from the landlord to the tenant stating that the landlords expect the full rent to be paid for June 2018;
- A copy of a letter from the tenant dated May 31, 2018, outlining the breach of the material term which the tenant states as a photographer coming into her unit, which she gave consent to, and rearranging the tenant's belongings. The tenant states that she did not realize the landlord would not be with the photographer when they came into the rental unit;
- A copy of an e-mail exchange in which the tenant accuses the landlords of coming into her rental unit without notice, which the landlords deny, and requesting for the lock to be changed;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$1,100.00; and

- A copy of a Monetary Order Worksheet outlining the landlords' monetary claim of \$1,100.00 for June 2018 unpaid rent.

In addition to providing some of the evidence as the landlord, the tenant also provided:

- A copy of a quote from the internet for storage space in the amount of \$143.00 per month.

The landlord submitted that the tenant owes unpaid rent in the amount of \$1,100.00 for June 2018 due to giving notice in May 2018 to vacate the rental unit for June 08, 2018 and not having paid any rent for June 2018. The landlord stated that on May 17, 2018, they requested for a photographer to enter the rental unit for the purpose of taking pictures of the rental unit on May 18, 2018, to which the tenant agreed. The landlord testified that the tenant had questions about the landlords' intention to sell their home on May 20, 2018, and that on May 23, 2018, the tenant stated that her items were moved to which the landlords apologized.

The landlord submitted that on May 30, 2018, the tenant gave her notice to end the tenancy due to a breach of a material term of the tenancy agreement. On May 31, 2018, the landlord asked the tenant to let them know what the breach of the tenancy agreement was and the tenant gave them a letter that same day citing that the tenant's quiet enjoyment was breached due to the actions of the photographer. The landlord stated that the tenant claimed that the door to access her suite was opened on June 01, 2018 and accused them of accessing the rental unit without giving her notice.

The landlord testified that they thought that they had addressed the concerns with the photographer and were very surprised to receive the tenant's notice to end tenancy. The landlord submitted that a temporary discomfort does not establish a material breach of the tenancy agreement.

The tenant submitted that an agent of the landlord came into the rental unit without being accompanied by the landlord. The tenant states that she gave notice of the agent moving her items around to the landlords and then on May 25, 2018, the tenant found a door that connects the rental unit to the landlord's unit open. The tenant maintained that the door was open due to the landlords entering the rental unit without authorization. The tenant testified that she was very disappointed with the items being moved and that she felt very uncomfortable living in the rental unit. The tenant stated that the landlords found someone to move into the rental unit as of June 15, 2018, and that they do not feel they should have to pay rent for June 2018. The tenant confirmed that they did not submit any receipts to prove any amounts paid for storage of their items.

The landlord responded that the door being found open happened after the tenant gave her notice to end the tenancy on June 01, 2018, and that they were not able to rent the tenant's rental unit out until September 2018.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant 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 landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and testimony, I find that the tenant has not provided any evidence that they suffered a loss as they did not provide any receipts to prove that they paid for the storage of items and the tenant did not prove the actual amount required to compensate them for their claimed loss. For the above reasons, the tenant's Application for compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed, without leave to reapply.

Section 45 (2) of the *Act* states that a tenant may only end a fixed term tenancy by giving the landlord a notice to end the tenancy which is effective on a date that is not earlier than one month after the date the landlord receives the notice, effective on a date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Branch Policy Guideline # 30 establishes that a tenant may only end their tenancy early if the landlord has breached a material term of the tenancy agreement.

Section 45 (3) of the *Act* states that if a landlord has breached a material term of the tenancy agreement, the tenant must give written notice of the breach to the landlord and gives a reasonable time for the landlord to correct the situation.

I find that there is no notice of a breach of a material term of the tenancy agreement in evidence from the tenant to the landlord which would allow them to end the tenancy early. I find that the tenant gave their notice to end the tenancy before they gave their notice of a breach and that the tenant did not give reasonable time for the landlord to correct the situation.

I further find that there was no actual material breach of the tenancy agreement as a material breach is one so serious that the tenancy could not continue. I find that the minor inconvenience of having belongings moved around is not a material breach. I accept the landlord's testimony that the door being found open occurred on June 01, 2018, as the tenant would have mentioned it in her notice of breach letter dated May 31, 2018, if the incident had already occurred. I further find that the tenant could have made an application for dispute resolution to suspend or set the landlord's conditions for entry and to have the locks changed if they felt that they needed to increase their security.

For the above reasons I find that the tenant's notice is in violation of section 45 of the Act. I find that the notice to end the tenancy was given in May 2018 and is effective for the end of June.

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.

Therefore, I find that the tenant is obligated to pay the monthly rent for June 2018 and that the landlord is entitled to a monetary award in the amount of \$1,100.00.

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

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlords' favour under the following terms, which allows the landlord to recover unpaid rent and to recover the filing fee for this Application:

Item	Amount
Unpaid rent for June 2018	\$1,100.00

Filing Fee for this Application	100.00
Total Monetary Order	\$1,200.00

The landlords are provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order 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: December 14, 2018

Residential Tenancy Branch