



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDENS CORPORATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as were both Tenants. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenants’ evidence package. Neither party brought up any issues regarding service.

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.

Preliminary Matters

The Landlord filed the Application for Dispute Resolution seeking a total of \$4,751.75. However, the Landlord submitted into evidence a Monetary Order Worksheet dated January 10, 2019 stating that they were seeking \$94.50 for cleaning and a total of \$5,975.00 in unpaid rent.

Although the Landlord did not submit an amendment form to amend the compensation sought in accordance with rule 4.1 of the *Rules of Procedure*, I accept that the amount claimed was amended. As the Tenants confirmed that they had received a copy of the Monetary Order Worksheet, I find that the Tenants would not be unfairly prejudiced by accepting the amended amount claimed by the Landlord and that they had time to submit evidence in response to the Landlord's amended claims. Therefore, I accept the amendment and find that the Landlord amended the monetary amount sought at the hearing to an amount of \$6,069.50, pursuant to rule 4.2 of the *Rules of Procedure*.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be allowed to retain the security deposit and/or pet damage deposit towards any compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement that was included as evidence. The tenancy began on July 1, 2018. Monthly rent in the amount of \$2,200.00 was due on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid at the outset of the tenancy. Although the Tenants moved out at the end of August 2018, they paid rent for September 1, 2018 and returned the keys to the Landlord on September 30, 2018. The tenancy agreement was signed for a fixed term of one year, set to end at the end of June 2019.

The Landlord stated that they are seeking an amount of \$94.50 for steam cleaning the carpets. A receipt from a cleaning company dated November 23, 2018 was submitted into evidence for an amount of \$94.50.

The Landlord submitted the Condition Inspection Report into evidence. The report does not show the date that the move-in inspection was completed but states the possession date as July 1, 2018 and is signed by both parties. The move-out inspection report was signed on October 19, 2018 by the Landlord. The Landlord testified that the Tenants sent an agent to attend the move-out inspection on their behalf. However, he stated that although the Tenants' agent participated in the inspection, the agent did not sign the move-out inspection. Instead, the agent took a photo of the report.

As the move-out inspection was not signed by the Tenants, the Landlord stated that they requested that the Tenants come back to redo the inspection, but that they refused. The Landlord stated that they provided a final notice to complete the inspection on October 30, 2018, but no one showed up for the Tenants. The Landlord submitted into evidence email exchanges with the Tenants regarding the move-out inspection. They also submitted the Notice of Final Opportunity to Schedule a Condition Inspection stating that the inspection will take place on October 30, 2018.

The Landlord confirmed that they still have the security deposit and pet damage deposit. They stated that the carpets were steam cleaned twice, but they are only seeking compensation for one cleaning. They stated that as the Tenants or their agent did not sign the move-out inspection the Tenants did not agree to any deductions from their security deposit. The Landlord stated that they always provide tenants with a copy of the tenancy agreement and the Condition Inspection Report. The move-out inspection notes that the carpets were dirty throughout the rental unit. The Landlord also submitted photos of the rental unit.

The Tenants testified that they participated in the move-in inspection but did not receive a copy. They agreed that they sent agents to the move-out inspection on their behalf but as the agents were not able to confirm the details on the move-in inspection they did not sign the move-out inspection. The Tenants confirmed that they have not received any amount from their security or pet damage deposits back and that they did not agree to any deductions in writing.

Both parties submitted numerous emails between the parties. The Tenants stated that the Landlord has lost their right to claim against the deposits due to not providing them with a copy of the move-in inspection. They submitted a written witness statement signed February 4, 2019 which states that the witness saw the Tenants complete a move-in inspection on July 1, 2018 and then saw the caretaker leave with the inspection report without providing them with a copy.

The Tenants provided their forwarding address through a letter dated October 2, 2018. The Landlord confirmed receipt of the letter on October 9, 2018 which was also stated in an email to the Tenants dated October 11, 2018.

The Landlord has also claimed \$4,400.00 in unpaid rent which he stated was \$2,200.00 each for the months of October and November 2018. The Landlord also claimed \$1,575.00 for additional rent owing, which he stated was the difference in what the Tenants rented the unit for and what the new tenants are renting the unit for, until the end of the fixed term.

The Landlord provided testimony that the Tenants requested permission to assign their tenancy agreement on July 31, 2018 and the Landlord responded on August 1, 2018 providing permission, as long as they were able to approve the potential new tenant. These emails were included in the Tenants' evidence.

The Landlord stated that they received an email from the Tenants on September 6, 2018 stating that if they were not able to find someone to assign or sublet the rental unit to, they would be breaking their fixed term tenancy agreement and ending their tenancy on September 30, 2018. The email dated September 6, 2018 was included as evidence.

The Landlord stated that they started advertising the rental unit right away in August 2018 when they became aware that the Tenants were looking to sublet or assign. They stated that they sent potential applicants to the Tenants for them to show the unit in September 2018. After the Landlord received the keys back on September 30, 2018, the Landlord began showing the unit themselves to potential new tenants in October and November 2018. The Landlord stated that they advertised the rental unit online for the same monthly rent of \$2,200.00. The Landlord submitted copies of the online advertisements from October and November 2018.

The Landlord stated that it was difficult to find a new tenant and they did not find someone until December 1, 2018. They submitted the new tenancy agreement into evidence stating that monthly rent is \$1,975.00. The Landlord testified that they had another unit available for this amount and as they were not able to find a new tenant for \$2,200.00, they offered this unit to the potential tenants for the same amount as the other rental unit, in order to secure tenants and minimize potential further losses for this unit.

The Tenants stated that they attempted to find new tenants to assign the tenancy agreement to and had four potential tenants. However, they stated that when sending the potential tenants to the Landlord the Landlord requested information such as pay stubs and proof of income documents, despite this being against privacy laws. The Tenants submitted an excerpt from the *Office of the Information and Privacy Commissioner*.

The Tenants stated that possibly due to this, the potential tenants they found all backed out and therefore the Landlord did not take reasonable steps to minimize their losses. They submitted into evidence email correspondence and rental applications with potential tenants during August and September 2018.

The Tenants also testified that while the Landlord was advertising the rental unit in September 2018, they did not show the unit to anyone as they did not receive any notice to show the rental unit and did not receive any notice to enter the rental unit. The Tenants stated that they had a friend show the unit once per week to potential tenants that they had found.

The Landlord stated that they had an agreement that the Tenants would show the rental unit in September 2018, but that the Tenants did not answer their phone when potential tenants called. The Tenants agreed that they did not get to everyone that was sent their way, due to being out of town and having a friend show the unit, However, they stated that the Landlord was allowed access to show the unit, so they were not sure why it was not shown by the Landlord during September 2018 as well.

Analysis

As the Landlord has retained the security deposit towards compensation owed, I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenancy ended on September 30, 2018 and the Landlord confirmed receipt of the Tenants' forwarding address on October 9, 2018 from a letter that was mailed to the Landlord on October 2, 2018. The Landlord's Application for Dispute Resolution was filed on October 24, 2018 and therefore was filed within 15 days of receiving the forwarding address.

However, the Tenants claimed that the Landlord lost their right to claim against the security deposit and pet damage deposit due to not providing them with a copy of the move-in inspection. Although the Landlord was not in agreement and stated that a copy would have been provided, I have no evidence before me to establish that it was provided as required by Section 23 of the *Act*.

Section 24(2)(c) of the *Act* states the following:

- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord has claimed for carpet cleaning as well as unpaid rent that totals more than the deposit amounts. I find that the Landlord was within their right to apply for compensation within 15 days and to retain the deposits towards compensation claimed, regardless of whether their rights to claim for damages were extinguished. Therefore, I find that Section 38(6) of the *Act* does not apply, and the Landlord does not owe the Tenants double the security deposit and may retain the deposits towards compensation found to be owing.

The Landlord has claimed \$94.50 for carpet cleaning. As stated in *Residential Tenancy Policy Guideline 1: Landlord and Tenant – Responsibility for Residential Premises*, a tenant with a pet may be required to clean the carpets at the end of the tenancy,

regardless of the length of the tenancy. As such, I find it reasonable that the Landlord required the carpets to be cleaned and award the Landlord \$94.50 for carpet cleaning.

The Landlord has also claimed \$2,200.00 for October 2018 rent and \$2,200.00 for November 2018. The evidence and testimony of both parties confirms that this was a fixed term tenancy for one year. The Tenants provided notice on September 6, 2018 that if they were not able to find a tenant for sublet or assignment that they would break the fixed term agreement by September 30, 2018.

As stated in Section 45(2) of the *Act*, to end a fixed term tenancy, a tenant must provide at least one month notice to end the tenancy at the end of the fixed term. As such, although the tenancy ended on September 30, 2018 when the keys were returned to the Landlord, the Tenants may still be responsible for rent for the remainder of the fixed term. I also note that as stated in Section 7(2), a party claiming a loss also has a duty to take reasonable steps to minimize any potential losses.

As the Tenants provided notice on September 6, 2018 that they may end the tenancy if they were not able to find tenants to assign the agreement to, I find that it would have been difficult for the Landlord to secure a new tenant for October 1, 2018. Instead, I find that the Landlord would have reasonably expected that rent would be paid as due on October 1, 2018.

Although the parties were not in agreement as to who was responsible for finding new tenants to assign the tenancy agreement to, I find evidence before me that both parties took steps to find new tenants. While the Tenants' evidence demonstrates that they found potential tenants who did not end up taking the rental unit, it is not clear that the potential tenants backed out due to the actions of the Landlord in asking for further information. Some of the emails included in evidence note that a potential tenant backed out as they found another place to rent.

The testimony of both parties also indicates that the Tenants were not able to show the rental unit regularly during September 2018. As such, I find that both parties attempted to work together to find new potential tenants to minimize their losses, but for various reasons they were not able to secure new tenants. While the parties may have been successful in finding a new tenant for October 2018, as this did not occur I find that the Tenants are responsible for October 2018 rent in the amount of \$2,200.00.

In order to minimize potential losses for November 2018, I accept the evidence of the Landlord that they continued to advertise and show the rental unit during October and

November 2018. I also find that reasonable steps were taken by the Landlord to advertise the rental unit for the same monthly rent that was paid by the Tenants. As the Landlord was not able to rent the unit during November 2018, despite their attempts to do so, I find that they have established that they are entitled to compensation in the amount of \$2,200.00 for November 2018.

The Landlord has also claimed \$1,575.00 as compensation for the difference in rent between their current rental and what the Tenants were paying as they stated that they offered the new Tenants a monthly rent of \$1,975.00. While the Landlord provided testimony regarding the reasons why they offered a rent discount to the current Tenants, I find that I do not have sufficient evidence to establish that they needed to do so in order secure a Tenant.

I am not satisfied that the Landlord would have been unable to re-rent the unit for \$2,200.00 or that a discount was needed to secure the current tenants. As such, I find that the Landlord has not established that that Tenants are responsible for the difference in rental amount and I decline to award compensation for this.

As the Landlord was partially successful in their application, pursuant to Section 72 I award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00.

The Landlord is awarded a Monetary Order in the amount outlined below:

Carpet cleaning	\$94.50
October 2018 rent	\$2,200.00
November 2018 rent	\$2,200.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$1,100.00)</i>
<i>Less pet damage deposit</i>	<i>(\$1,100.00)</i>
Total owing to Landlord	\$2,394.50

Conclusion

Pursuant to Sections 67 and 72 of the Act, I grant the Landlord a **Monetary Order** in the amount of **\$2,394.50**. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants

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: February 27, 2019

Residential Tenancy Branch