



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDCL-S MNRL

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38;
- authorization to recover the filing fee 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. The landlord was represented by their agent.

As both parties were present service of documents was confirmed. Both parties confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the other's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The parties agreed on the following facts. This periodic tenancy began in July 2018. The monthly rent was \$1,200.00 payable on the 17th of each month. A security deposit of \$600.00 was paid at the start of the tenancy. No condition inspection report was prepared at any time for the tenancy. \$589.00 of the security deposit was returned to the tenant at the end of the tenancy and the landlord retains \$11.00. The tenancy ended on January 8, 2019.

The landlord submits that they initially accepted the tenant's notice to end tenancy delivered by email on December 10, 2018 and responded that the tenant could pay pro-rated rent of \$920.00 up to January 9, 2019. The landlord testified that after sending the correspondence to the tenant they later decided that the tenant's email notice was insufficient and that the tenant should pay the full rent up to January 16, 2019. The landlord sent an email to the tenant outlining their new position on December 14, 2018. A copy of the correspondence was submitted into evidence. The landlord seeks a monetary award in the amount of \$280.00 for the period of January 9, 2019 to January 16, 2019.

The landlord testified that the tenant reported rats in the rental unit. The landlord initially instructed the tenant to hire pest control companies to deal with the infestation themselves and that the landlord would compensate for their cost. The tenant did not hire a pest control company and the landlord subsequently retained a company. The landlord said that they were informed by the pest control company that they did not find evidence of where the rats entered the suite and therefore believe that the tenants are responsible for allowing the rats into the suite. The landlord seeks a monetary award in the amount of \$257.00, half the cost of pest control.

The landlord seeks a monetary award in the amount of \$600.00 for lost rental income. The landlord testified that they requested the tenant provide authorization that the landlord could enter the rental suite on any date during specific hours for the purpose of showing the suite. The tenant did not provide blanket authorization to the landlord and requested that the landlord provide written notice in accordance with the Act prior to each instance when they wished to enter the rental unit. The landlord says that the tenant's refusal to provide this blanket authorization hampered their ability to show the rental unit and was unable to arrange for a new tenancy until March 1, 2019.

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.

I find that the email of December 10, 2018 from the landlord clearly accepts the tenant's notice to end tenancy. The landlord goes on in the email to provide an end of tenancy date of January 9, 2019 and that the tenant should pay the amount of \$920.00 as the full payment for the duration of the tenancy. The landlord claims that they rescinded the offer and demanded full payment of \$1,200.00 by email of December 14, 2018. I do not find the landlord's submission that the email was merely an offer which the tenant failed to accept to be persuasive. While the email deals with multiple issues, on the issue of when the tenancy will end the landlord states unequivocally that the tenancy will end on January 9, 2019 and that the tenant is to pay \$920.00 by direct deposit.

I find it unconscionable for the landlord to demand additional amounts when they are the ones who have accepted the tenant's notice and set a date for the tenancy to end. I find that the landlord has not shown that they are entitled to the amount of \$280.00.

I find that the landlord has not established on a balance of probabilities that the tenants are responsible for any portion of the pest control bills. I do not find the landlord's conclusion that because the pest control company was unable to locate the points from which the rats entered the suite, the tenant must be responsible to be persuasive. I do not find that there is sufficient evidence to conclude that the tenant is responsible through their action or neglect for the rats in the suite.

Furthermore, I note that the landlord charged the tenant with contacting pest control and dealing with the rats. In accordance with section 32(1) of the *Act* it is the landlord who must provide and maintain residential property in a reasonable state of repair. Section 28 provides that a tenant is entitled to quiet enjoyment free of unreasonable disturbances. I find that the landlord had a responsibility to deal with the pest problem in accordance with the *Act*. The landlord was not at liberty to assign this responsibility

to the tenant. A landlord cannot fail to take action, charge the tenant with resolving the issue, then hold the tenant responsible for their failure to act. I find that there is insufficient evidence that the pest control issue arose as a result of the tenant and therefore I dismiss this portion of the application.

Section 29 of the Act prohibits a landlord from entering a rental unit without proper notice or permission from the tenant. During a tenancy the tenant has a right to reasonable privacy and exclusive possession of the rental unit. A landlord cannot demand that a tenant provide blanket authorization that the landlord may enter on any day during the tenancy provided it is within a certain time. The tenant did not breach the Act, regulations or tenancy agreement but refusing to provide such an overarching authorization to the landlord. I find that the landlord has not shown that their loss of rental income is attributable to a breach by the tenant. Consequently, I dismiss this portion of the application.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

The parties agree that the landlord has returned all but \$11.00 of the security deposit to the tenant. The tenant said that they have not given authorization that the landlord may deduct any amount from the security deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time for this tenancy. Section 24 of the Act provides that the landlord's right to claim against the security deposit is extinguished if the landlord does not prepare a condition inspection report in accordance with the regulations. Consequently, I find that the landlord has extinguished their right to claim against the security deposit due to their failure to prepare a condition inspection report.

While the landlord is not authorized to retain the \$11.00 of the security deposit, I decline to issue a monetary award for so minimal an amount.

A landlord is in the business of taking payment for rent. It is incumbent on the landlord that they are aware of the provisions of the Act and conduct themselves in accordance with legislation.

As the landlord's application was not successful the landlord is not entitled to recover their filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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: April 25, 2019

Residential Tenancy Branch