



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S
MNDCT

Introduction

This hearing was convened by way of conference call concerning applications made by a landlord and the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and landlord attended the hearing, and the tenant was assisted by an Advocate and another assistant. During the course of the hearing, the tenant advised that the person named as landlord in the tenant's application is a person to whom rent was paid and the person the tenant dealt with. The tenancy agreement names the landlord and contains a signature of the landlord as the same landlord in the landlord's application. Therefore, I amend the Style of Cause accordingly, and the frontal page of this Decision reflects that amendment.

The landlord and the tenant each gave affirmed testimony, and each party called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to make submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for return of double the amount of the security deposit?

Background and Evidence

The tenant testified that this tenancy began on November 1, 2018 and the tenant moved out on February 11, 2019. The tenant had originally met with a property manager, and although the tenant lost his copy of the tenancy agreement, the tenant understood it was a month-to-month tenancy. A copy has been provided as evidence for this hearing by the landlord, which confirms that but also says that it is for a fixed term ending on May 31, 2019 at which time the tenant was to move out. Rent in the amount of \$650.00 per month was payable on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$275.00 at the outset of the tenancy, and no pet damage deposit was collected. The rental unit is a room in a house wherein the tenant shared kitchen and bathroom with 5 or 6 other tenants.

The tenant further testified that he contacted an agent of the landlord asking if he could pay half a month's rent, and she confirmed it was okay. The tenant then notified the landlord's agent that the tenant was moving out on February 15, 2019 and received no response. Then, the tenant's mother received a text message from the landlord's agent saying it was okay.

On February 14, 2019 the tenant sent a letter to the landlord by regular mail, along with the key to the room to the address of the landlord as provided on the tenancy agreement. A copy of the letter with the key has been provided as evidence for this hearing, and it is dated February 14, 2019 and contains the tenant's forwarding address. The landlord has not returned any portion of the security deposit and the tenant did not consent to the landlord retaining any of it. The landlord served the tenant with the Application for Dispute Resolution after the tenant filed his dispute.

The tenant and his mother cleaned the room prior to leaving, with the help of others, and the rental unit was left in a state that it could be re-rented. The tenant never had a pet in the rental unit.

The tenant's witness is the tenant's mother and testified that she had had continuing correspondence with the landlord's agent by email, text messages and phone calls, which included a message about ending the this tenancy. On January 31, 2019 the witness advised that the tenant needed to move back to another city and that he had given a note to be out by February 15, 2019. The witness said she would send half of the rent and an address to return the security deposit to. The landlord's agent replied asking if the witness wanted to give a work place contact number, and advised that she would report to the landlord that the tenant left.

The witness took photographs of the rental unit which have been provided as evidence for this hearing and testified that no one on behalf of the landlord attempted to schedule a move-out condition inspection.

The landlord testified that he and his wife were out of the Country from January 24 to February 16, 2019 and had no access to their cell phones or email.

The landlord's agent went to the rental unit often, and the office was open 24 hours per day. The landlord only received half of rent for February by e-transfer in early February, 2019, and was told that the tenant had moved out on February 11, 2019. The tenant only paid half of February's rent, leaving a balance of \$325.00 due, which the landlord claims as against the tenant.

No move-in condition inspection report was completed because the property manager waited for hours at the rental unit and the tenant didn't show up. At the end of the tenancy the tenant left the room and the bathroom very dirty and left garbage outside. A photograph of garbage has also been provided which the landlord testified was taken about February 18, 2019. Also provided is a receipt dated February 18, 2019 from a cleaning service totalling \$160.00 for cleaning a room with bathroom, steam cleaning carpet, and taking away the garbage, which the landlord claims as against the tenant.

The landlord advertised the rental unit for rent on Kijiji at \$650.00 per month commencing on February 16, 2019. After 1 week there was no response so the landlord reduced the rent to \$620.00 per month and the rental unit was re-rented effective March 16, 2019. The landlord claims the difference of \$30.00 per month for half of the month of February (\$15.00), as well as \$30.00 for each of April and May, 2019, for a total of \$75.00.

The landlord's witness is the landlord's wife and testified that no letter or key were received from the tenant after the tenancy had ended.

Analysis

Firstly, with respect to the term of the tenancy, both "month-to-month" and "fixed term" are checked off on the tenancy agreement. Where it is not certain, it is a month-to-month tenancy, and I so find.

The *Residential Tenancy Act* specifies how a tenancy ends, and if by a tenant in a periodic tenancy, the tenant must give notice in writing the day before rent is payable under the tenancy agreement and must be effective at the end of the rental period. If by mutual agreement, it must be in writing, and in all cases must be signed and dated, give the effective date of the notice and address of the rental unit. In this case, the tenant's witness testified that it was by mutual agreement, but there is no evidence of such an agreement in writing and no evidence that the tenant gave notice to end the tenancy in accordance with the *Act*. The tenant paid only half of February's rent, and I find that the landlord is entitled to the other half, or \$325.00.

With respect to the landlord's claim for loss of rental revenue, the landlord testified that he advertised on Kijiji as soon as he returned to the Country, but there is no evidence to support that. The landlord also testified that the rental unit was re-rented for March 16, 2019 and therefore the only loss was for half of March, 2019. In the absence of any supporting evidence, I am not satisfied that the landlord has established that he mitigated a loss of rental revenue to March 15, 2019. Having found that the tenancy is a month-to-month tenancy, I also find that the landlord is not entitled to any differential in the amount currently collected for rent.

The *Residential Tenancy Act* also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit and places the onus on the landlord to ensure the reports are completed in accordance with the regulations. The landlord has not ensured that they have been completed, and whether or not the landlord's agent had to wait for the tenant, the move-in report ought to have been completed at some point at the beginning of the tenancy. The tenant disputes damages or that cleaning was required at the end of the tenancy, and testified that he didn't have a pet. Considering that the tenancy lasted less than 4 months, and the tenant had no pets, I am not satisfied that the landlord has established that the tenant failed to leave the rental unit reasonably clean and undamaged. Given that there are several other tenants who enjoy the same property, I am not satisfied that the landlord has

established that the garbage was left there by the tenant. The landlord's application for monetary compensation for damage to the rental unit is dismissed.

The tenant testified that he provided the landlord with a letter and the key to the rental unit by regular mail at the address of the landlord contained in the tenancy agreement which was mailed on February 14, 2019, which I accept. Documents sent by regular mail are deemed to have been received 5 days later, which in this case is February 19, 2019. The landlord did not return any portion of the security deposit to the tenant but made an application for dispute resolution claiming against it on April 18, 2019, which is beyond 15 days as required by the *Residential Tenancy Act*. Therefore, I find that the tenant has established a claim for double the amount of the security deposit, or \$550.00.

Having found that the landlord is owed \$325.00 for rent and the tenant is owed \$550.00 for double the amount of the security deposit, I set off those amounts, and I grant a monetary order in favour of the tenant for the difference in the amount of \$225.00.

Since both parties have been partially successful with the applications, I decline to order that either party recover filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$225.00.

This order is final and binding and may be enforced.

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: May 29, 2019

Residential Tenancy Branch