



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 32 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2018 for a fixed term of one year ending on March 14, 2019. The tenant vacated the rental unit on December 31, 2018. Monthly rent of \$3,500.00 was payable on the first day of each month. A security deposit of \$1,750.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. A move-in condition inspection report was completed for this tenancy. The landlord did not have written permission to keep any amount from the tenant's security deposit.

The landlord said that no move-out condition inspection report was completed, while the tenant claimed that one was done with the landlord's parents. The tenant confirmed that she provided a written forwarding address by way of her driver's license copy that was given to the landlord at the beginning of this tenancy. The landlord said that she received it, but did not know it was the tenant's forwarding address. The landlord filed this application to retain the tenant's security deposit on March 15, 2019.

The landlord seeks a monetary order of \$8,750.00 plus the \$100.00 application filing fee.

The landlord seeks \$3,500.00 for each month of rent from January to February 2019, as per the parties' fixed term tenancy agreement. She claimed that the tenant breached the fixed term by leaving early, the landlord had to pay a rental agency \$1,600.00 to find new tenants, and the landlord was out of town and travelling at the time. She maintained that she was also seeking \$150.00, which is half the difference in the March 2019 rent of \$300.00, for having to rent the unit to new tenants at \$3,200.00, a lower rent than what the tenant was paying at \$3,500.00. She explained that she was only seeking half of March 2019 rent difference because the tenant's fixed term was to end on March 14, 2019. She stated that new tenants moved in on March 1, 2019.

The landlord provided a copy of the tenancy agreement with the new tenants, a copy of a receipt for \$1,600.00 dated March 14, 2019, claiming that she paid cash but could not recall when. She said that she did not provide the documents from her rental agency to

show when advertisements for re-rental were posted, what they said, how many showings were done, or how many inquiries were answered.

The tenant disputes the landlord's claim. She said that she paid rent until the end of December 2018 to the landlord. She stated that she told the landlord in August 2018, that she had to move out early, because her grandmother was sick and she had to go see her out of the country. She maintained that she asked to leave in November 2018, but the landlord insisted she pay a penalty of 1.5 months' rent, so she gave notice on November 1, 2018, to move by December 31, 2018. She provided a copy of this notice. She explained that the landlord did not show her unit to any prospective tenants from August to December 2018, while she was living there. The landlord stated that the market was down and that because of the tax regarding empty homes, it was hard for her to re-rent the unit at the same rent.

Analysis

I find that the landlord and tenant entered into a fixed term tenancy for the period from March 15, 2018 to March 14, 2019.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If she does, she may have to pay for rental losses to the landlord. In this case, the tenant ended her tenancy on December 31, 2018, prior to the end of the fixed term on March 14, 2019. I find that the tenant breached the fixed term tenancy agreement.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a

responsibility on a landlord claiming compensation for loss resulting from tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlord 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 tenant in violation of the *Act*, *Residential Tenancy 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence presented, I find that the landlord failed to mitigate her losses in her efforts to re-rent the unit to prospective tenants. The tenant provided notice almost two months earlier on November 1, 2018, to move by December 31, 2018. The landlord did not provide documentary or verbal proof that she acted on this notice or showed the unit at any time during these two months. Accordingly, I dismiss the landlord's application for a rental loss of \$3,500.00 for January and February 2019, totalling \$7,000.00.

The landlord failed to provide copies of any rental advertisements that she said she posted in order to prove how, when and on what terms she attempted to re-rent the unit. The landlord did not show what amount she posted the unit for, given that she took a \$300.00 rent loss when she re-rented the unit in March 2019. I dismiss the landlord's claim for the \$150.00 rental loss for March 2019, without leave to reapply.

The landlord did not indicate how many showings were done or how many inquiries were answered from potential tenants. Yet, the landlord claimed to have paid a \$1,600.00 rental fee to an agency, which was paid on March 14, 2019, more than two weeks after new tenants were found at the end of February 2019, as per the landlord's testimony. The landlord provided no breakdown for the \$1,600.00 rental fee and this claim is dismissed without leave to reapply.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$1,750.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. I order the landlord to return the tenant's entire security deposit in the amount of \$1,750.00 to the tenant within 15 days of receiving this decision. I find that the tenant is entitled to the return of her deposit from the landlord, as per Residential Tenancy Policy Guideline 17, which requires me to deal with the deposit when the landlord has applied to keep it, including the return of it to the tenant without the tenant's application.

I find that the tenant is not entitled to the return of double her security deposit as per section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17. The tenant did not provide her forwarding address using a proper method as per section 88 of the *Act*, triggering the doubling provision, as the landlord did not know the address for service was contained on the tenant's driver's license given at the beginning of this tenancy.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,750.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: June 29, 2019

Residential Tenancy Branch