



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL; MNSD, MNDCT, FFT

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of their security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants (male and female) 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 46 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the female tenant's surname. The tenants agreed to this amendment during the hearing.

Issues to be Decided

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

Is the landlord entitled to retain a portion of the tenants' security deposit?

Are the tenants entitled to a return of their security deposit?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2018 and ended on March 8, 2019, pursuant to a mutual agreement to end tenancy. Monthly rent in the amount of \$1,490.00 was payable on the first day of each month. A security deposit of \$795.00 was paid by the tenants and the landlord continues to retain the deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenants to the landlord on March 9, 2019, by way of the move-out condition inspection report. The landlord did not have any written permission to keep any part of the tenants' security deposit. The landlord's application to keep the deposit was filed on March 8, 2019.

The landlord seeks unpaid rent of \$384.52 plus the \$100.00 application filing fee. The landlord seeks rent from March 1 to 8, 2019, prorated at \$348.52, which he calculated as follows: \$1,490/31 days in March 2019 x 8 days. The landlord claimed that the tenants did not pay the above rent for March 2019 after signing the mutual agreement to end their tenancy on March 8, 2019. The tenants dispute this claim, stating that they were forced to move out of the rental unit, so they are not required to pay this rent.

The tenants seek a return of their security deposit of \$795.00, the application filing fee of \$100.00, rent of \$1,540.00 for December 2018, and rent of \$1,490.00 for each of

January and February 2019. During the hearing, the tenants confirmed that they did not pay rent of \$1,490.00 for March 2019, so they were no longer seeking its return.

The tenants claimed that they left the rental unit abruptly because of mold in their daughter's play/therapy room, which she had been using four times per week. They stated that the landlord told them about the leaky window when they moved in, as it was noted in the move-in condition inspection report. But they claimed that the landlord never fixed it and it rained a lot from November 2018 to February 2019. They said that they had an air quality assessment done, the rental unit was found to be unliveable, they had two days to find a place, so they left.

The tenants explained that they called the RTB to ask about their options, they were told they could serve a notice of breach of a material term of the tenancy agreement and wait for the landlord to repair, or they could sign a mutual agreement to end tenancy. They stated that they could not wait for the landlord to complete repairs because they have two young daughters, so they signed the mutual agreement. They maintained that they told the landlord about the mold in November and December 2018, they sent photographs, the landlord said to keep the area dry, and they exchanged messages back and forth, as both parties went on vacation at different times. They maintained that in January 2019, the landlord came to look at the carpet which had mold, said he would replace it, but there was a leaky window which was a bigger problem and under a strata lawsuit so it could not be fixed. They confirmed that they got a rent reduction of \$50.00 from December 2018 rent, where they only had to pay \$1,540.00 for that month. They agreed that they got a \$100.00 rent reduction from January to March 2019, where they had to pay \$1,490.00 per month.

The landlord agreed to return the remainder of the tenants' security deposit after deducting the prorated March 2019 rent and the filing fee for his application. He disputes the remainder of the tenants' monetary claim. He said that he told the tenants about the leaky window before they moved in, it was noted on the move-in report, and he was unable to fix the window because it was part of a lengthy insurance claim with strata. He said that it was part of the building warranty and that a number of units had the leaking problem.

The landlord claimed that he was first told about the mold on December 18, 2018, not in November as claimed by the tenants. He said that he told the tenants that if they got a mold inspection done, he would reimburse them if they provided him with the quote but he never received one. He claimed that on January 20, the tenants refused entry for

him to inspect the unit, so he entered on February 5, and the tenants were still using the playroom with the mold. The tenants denied this, stating that since December 18, they closed the door and did not use the room. The landlord explained that the foam floor tiles installed by the tenants, and the carpet, had wet mold spots.

The landlord said that on February 9, he found black spots on the carpet with the tenants, and that he had a contractor inspect the unit on February 10, 11, and 13. He stated that the carpet was replaced on February 23, 2019, with water-resistant vinyl flooring. He maintained that he ordered mold testing on February 26, 2019, after fixing the drywall, and that on February 28, he got the mold test results and offered to share it with the tenants. The tenants complained that it was the leaky window that was the problem, not the drywall. The landlord claimed that he offered the tenants to end the tenancy early and offered a mutual agreement to end tenancy. The landlord maintained that the tenants changed their original story to state that the mold started in November rather than December, and they were now trying to claim for additional expenses, such as more rent and moving expenses.

Analysis

Landlord's Application

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate a 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 tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay prorated rent of \$384.52 from March 1 to 8, 2019. I find that the tenants are obligated to pay this rent, as they lived in the rental unit during this time. Therefore, I find that the landlord is entitled to a monetary order of \$384.52 in unpaid rent from the tenants.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 application filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$795.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting

provisions of section 72 of the *Act*, I order the landlord to retain \$484.52 from the tenants' security deposit and to return the remainder from the deposit of \$310.48 to the tenants. The tenants are provided with a monetary order of \$310.48.

Tenants' Application

The tenants provided a number of photographs, reports, letters, and other documents, with their application. However, they did not go through these documents during the hearing, despite the fact that they spoke for the majority of the time, as compared to the landlord.

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. To prove a loss, the tenants 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of \$4,520.00 for rent from December 2018 to February 2019, without leave to reapply.

I find that the tenants voluntarily vacated the rental unit. The tenants did not prove that they were forced to move. The fact that the tenants chose to leave when they did, was up to them. They called the RTB and were specifically told that they could send a letter to the landlord regarding breach of a material term of the tenancy agreement, but chose not to do so. They instead elected to sign a mutual agreement to end tenancy and moved out pursuant to it.

The tenants were aware of the leaking window before they moved in, it was noted on their move-in condition inspection report, and they still chose to move in with their children. The tenants received a rent reduction totalling \$250.00 from December to February to compensate for the mold and water issues. I find that the landlord adequately dealt with the tenants' complaints by inspecting the unit, sending contractors to inspect the unit, fixing the drywall, and replacing the carpet.

I find that the strata insurance issue regarding the leaking window was outside of the landlord's control regarding the timing and repair, and that is why the landlord informed the tenants of this issue before they moved in.

As the tenants were mainly unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to retain \$484.52 from the tenant's security deposit in full satisfaction of his monetary award.

I issue a monetary order in the tenants' favour in the amount of \$310.48 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.

The remainder of the tenants' application is dismissed 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: June 29, 2019

Residential Tenancy Branch