



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on April 11, 2019 with an amendment made June 26, 2019 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on April 23, 2019 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on October 1, 2018 for a fixed term to end September 30, 2019. The tenancy ended on March 31, 2019. Rent of \$1,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit and \$600.00 as a pet deposit. Nothing in the tenancy agreement contains any restrictions of the use of any products in the unit.

The Landlord states that because of the Tenant ending the tenancy before the end of the fixed term the Landlord lost rental income. The Landlord states that the Tenant informed the Landlord at the end of February 2019 that the Tenant was moving out of the unit on March 31, 2019. The Landlord states that the unit was advertised online on March 11, 2019 for occupancy of April 1, 2019 and rent of \$1,200.00. The Landlord states that there was insufficient interest, so the Landlord made verbal offers to prospective tenants of rent of \$1,100.00. The Landlord states that a tenant was found for a tenancy start date of June 15, 2019. The Landlord claims lost rental income of \$1,200.00 for April 2019, \$1,200.00 for May 2019, \$650.00 for June 2019, and \$300.00 for the remainder of the term to and including September 2019.

The Landlord states that the Tenant used products in the lower unit that caused the Landlord to have allergic reactions. The Landlord claims \$164.45, \$391.95, \$391.95 and \$24.85 for air purifiers and filters.

The Tenant states that due to financial pressure the Tenant wanted to end the tenancy early. The Tenant submits a copy of an email to the Landlord dated February 27, 2019 where the Tenant asks to end the tenancy. The Tenant states that the Landlord replied by email on that same date telling the Tenant not to worry and that the Tenant did not need to stay at the rental unit. The Tenant provides copies of those emails. The Tenant states that as the Landlord never mentioned anything other than not having to stay this led the Tenant to believe that it was okay to end the tenancy early. The Tenant

states that the Landlord was sent a mutual agreement to end the tenancy for March 31, 2019 however the Landlord never responded until March 31, 2019 when the Landlord informed the Tenant that it would not sign the mutual agreement.

The Landlord states that the email was sent prior to talking with others and the RTB about the tenancy and that the Landlord believed that it could retain the Tenant's security and pet deposit to cover off the losses that may occur until a new tenant was obtained. The Landlord states that the Tenant was never told that the Landlord would be seeking lost rental income if the Tenant ended the tenancy before the fixed term date.

The Parties agree to settle the Tenant's claim for loss of household products with the Landlord paying the Tenant \$200.00 in compensation for the claim.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The Tenant's evidence that the Tenant understood that the Landlord agreed that the Tenant could end the fixed term tenancy was hesitant. For this reason and although on February 27, 2019 the Landlord did inform the Tenant not to worry about the Landlord finding a new tenant, given that the Landlord did not sign the mutual agreement to end the tenancy that was sent March 1, 2019 I find on a balance of probabilities that the Tenant did not have an agreement with the Landlord to end the tenancy early. I find therefore that by moving out of the unit on March 31, 2019 the Landlord has substantiated that the Tenant breached the fixed term tenancy. Given the Landlord's undisputed evidence that there was not any interest in the unit until June 15, 2019 I find on a balance of probabilities that the short delay in

advertising did not result in the lack of interested tenants. For this reason and as the Landlord obtained less rental income than it otherwise would have with the Tenant's tenancy, I consider that the Landlord acted reasonably to mitigate the claimed rental losses caused by the Tenant's breach. The Landlord is therefore entitled to lost rental income of **\$1,200.00** for April 2019, **\$1,200.00** for May 2019, **\$650.00** for June 2019 and **\$300.00** for the remainder of the term to and including September 2019.

As there is nothing in either the tenancy agreement or the Act that restricts the Tenant from using scented or chemical based products in the rental unit I find that the Landlord has not substantiated that the Tenant breached anything leading to the losses claimed. I therefore dismiss the claims in relation to air purifiers and filters. As the Landlord's claims have met with substantial success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,450.00**.

Given the mutual agreement for the Landlord to pay the Tenant compensation of **\$200.00** for the loss of the Tenant's products I find that the Tenant is entitled to this amount. As the Tenant's claim was not resolved until the hearing I find that the Tenant is entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$300.00**. Deducting this amount and the combined security and pet deposit plus zero interest of **\$1,200.00** from the Landlord's entitlement leaves **\$1,950.00** owed to the Landlord (\$3,450.00 - \$1,500.00).

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,200.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,950.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 17, 2019

Residential Tenancy Branch