



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL –S; MNDCL –S; FFL

Introduction

This hearing dealt with a landlord's application for unpaid rent and utilities, as amended; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing documents and evidence. I determined the tenant had served her rebuttal evidence late; however, the landlord acknowledged she had an opportunity to read the tenant's evidence and was prepared to respond to it. As such, I was satisfied the landlord was not prejudiced by the late service of evidence and I admitted all of the evidence submitted by both parties.

On a procedural note, the landlord requested that her monetary claim be amended to reduce the claim to reflect unpaid rent and utilities for the month of March 2019 only. I amended the claim accordingly since the request for amendment was beneficial to the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recovery unpaid rent and utilities from the tenant for the month of March 2019?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The parties executed a written tenancy agreement for a fixed term tenancy set to commence on September 1, 2018 and end on April 30, 2019. The tenant paid a security deposit of \$750.00 and was required to pay rent of \$1,500.00 on the first day of every month. The tenant vacated the rental unit on March 1, 2019.

I was provided consistent testimony that the tenant and the landlord had a telephone conversation on February 2, 2019 concerning the tenant wanting to end the tenancy. The landlord testified that on February 2, 2019 the tenant informed her that she had been on a waiting list for a more affordable rental unit and had been recently accepted as a tenant. On February 8, 2019 the tenant sent an email to the landlord stating she was ending the tenancy effective on March 1, 2019 for reasons provided orally on February 2, 2019 but she did not elaborate on those reasons in the email. The tenant also stated in the email that she was ending the tenancy because she could no longer afford the rent.

In response to the tenant's email, the landlord's husband responded to the tenant the same day, and provided the following statements to the tenant, in part:

To terminate the lease before the agreed time, end of April, you need to send out email one month before, i.e., to terminate the lease by March 1st, you need to send the e-mail by January 31st. We will make the exemption if you find potential transfer of the lease to others, provided we interview them and find the[m] acceptable.

With this, you are still responsible for the rent in March and the security will be returned in April.

By the end of March, when your lease ends, we will provide you the details of the utility you paid, and make the adjustments.

The landlord testified that she started advertising the unit for rent mid-February 2019, online.

On February 22, 2019 the tenant and landlord speak on the telephone and the tenant informs the landlord that she found a potential person to take over the tenancy agreement. According to the landlord the potential tenant was only prepared to pay rent of \$800.00 per month and the landlord was not agreeable to accepting that amount for the rental unit. The landlord suggested the tenant and the potential tenant become roommates until the end of the fixed term. The tenant stated she considered that but decided she did not want to continue to live in the rental unit with a roommate. The tenant communicated to the landlord in a text message of February 24, 2019 that she

decided to not stay with a roommate and will proceed to move to her new living accommodation.

The landlord proceeded to schedule a date and time for the move-out inspection and the parties met at the unit as scheduled on March 1, 2019 to do the inspection and the tenant returned the key(s) to the landlord.

On March 12, 2019 the tenant communicated to the landlord via text message that the personal previously interested in renting the unit was still interested in the rental unit and that person had more questions for the landlord. The landlord responded to the tenant on March 13, 2019 about another issue but not about the potential tenant put forth by the tenant. The landlord testified that she had accepted a security deposit from another person on March 14, 2019 for a new tenancy set to begin April 1, 2019.

The landlord seeks to recover unpaid rent of \$1,500.00 from the tenant for the month of March 2019 because the tenant gave insufficient notice to end tenancy and the rental unit was vacant for the month of March 2019.

The tenant was of the position that she met her obligation to find a potential person to re-rent the unit, as stated by the landlord's husband in the February 8, 2019 email, and the landlord did not do enough to consider that person.

The tenant also submitted that she experienced a lot of noise from the unit about the rental unit which was also a factor in her decision to end the tenancy. I noted that the tenant had not made any mention of noise in the notice she gave tot the landlord. The tenant stated she gave up raising the issue since previous complaints were ignored.

In addition to rent for March 2019 the landlord seeks \$140.00 for utilities for the month of March 2019. Both parties were in agreement that the tenant had been paying \$140.00 per month for utilities, as required in the addendum. However, the tenant submitted that the landlord had not provided a detailed accounting of the actual utilities consumed or an adjustment at the end of the tenancy as stipulated in the addendum. The addendum states as follows with respect to utilities:

- The tenants are responsible for the Electricity and additional data internet usage. At the agreement between the tenants and the Landlord, the Electricity will be installed by the Landlord and the tenants will pay equal payment of \$140/month for electricity and internet. At the end of the tenancy, April 30, 2019, excess payment made for the electricity will be returned back to the tenant.

The landlord's husband had indicated there would be an adjustment for the utilities at the end of March 2019 in the email of February 8, 2019 and the landlord acknowledged that the tenant requested the information in an email dated April 1, 2019 but that she had yet to provide the tenant with the information. The landlord responded by stating her husband has the breakdown of the actual utilities consumed by the tenant but that she did not have the information before her. Since I was unable to see the adjustment for the actual utilities compared to the payments made by the tenant, I dismissed the landlord's request for \$140.00. I strongly encouraged the landlord to provide the tenant with the information that was requested so that the tenant may see whether she overpaid or underpaid for utilities and avoid a future Application for Dispute Resolution that the tenant may file.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Section 26 of the Act requires a tenant to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent, such as: recovery of an overpaid security deposit or rent; emergency repairs made by the tenant in accordance with section 33 of the Act; or, authorization has been given by an Arbitrator.

In this case, the tenant was required to pay rent of \$1,500.00 on first day of every month for a fixed term ending April 30, 2019. The tenant's submissions did not support one of the legal reasons for withholding rent.

Where a tenant ends a tenancy before the end of their fixed term, thereby breaching the agreement, the tenant may be held responsible to pay rent for the remainder of the term provided the landlord took reasonable steps to mitigate losses.

The Act does provide limited circumstances when a tenancy may bring a fixed term tenancy to an end early, including authorization or an order of an Arbitrator, where a tenant is fleeing domestic violence or going into a care home; however, the tenant did not put forth evidence to demonstrate any of those things. Section 45(3) of the Act provides that a tenant may end a fixed term tenancy early where the landlord has breached a material term of the tenancy agreement, including the right to quiet enjoyment, and did not correct the breach within a reasonable amount of time after written notice to do so. In this case, the tenant did not give the landlord written notice to correct a breach of a material term.

The tenant gave advance notice of her intention to end the tenancy early by way of an email notice of February 8, 2019; however, I find that notice is insufficient to end the tenancy and end her obligation to pay rent after February 2019. Then, later in the month, the landlord gives the tenant the opportunity to continue with the tenancy with a roommate and the tenant informs the landlord she does not want to proceed with that option on February 24, 2019 which leaves very little time for the landlord to find a replacement tenant for March 1, 2019.

I have considered whether the landlord acted reasonably to mitigate loss of rent and I am satisfied the landlord did. The landlord testified that she started advertising the unit in mid-February 2019 and secured a replacement tenant as of March 14, 2019 when a security deposit was collected for a tenancy set to commence April 1, 2019.

As for the tenant bringing forward a potential tenant, I heard that a potential tenant was only willing to pay \$800.00 per month for the rental unit and I find the landlord's rejection of that proposal was within reason considering the rental unit had been rented for \$1,500.00 per month. Although the landlord did not respond to the additional communication from the tenant of March 12, 2019 regarding a potential tenant I find that to be inconsequential since the landlord secured a replacement tenant on March 14, 2019.

With respect to the noise complaints the tenant raised, the tenant may be entitled to compensation for loss of quiet enjoyment if the landlord did not take sufficient action to protect the tenant's rights; however, as explained previously in this analysis, I find the tenant's written communication did not amount to a notice to end tenancy under section 45(3). To pursue compensation for loss of quiet enjoyment, the tenant may make her own Application for Dispute Resolution against the landlord.

In light of all of the above, I award the landlord recovery of unpaid rent of \$1,500.00 for the month of March 2019.

As for the landlord's claim for utilities, I find the landlord's entitlement to utilities is unclear based on the evidence before me. The addendum created by the landlord indicates that an adjustment will be made at the end of the tenancy to reflect actual usage and that was not presented to me or the tenant as evidence. The email of February 8, 2019 written by the landlord's husband also indicates an adjustment will be determined at the end of March 2019. Without this information I am uncertain as to whether the tenant has overpaid or underpaid utilities by way of the equal monthly payments she has already made. Therefore, I find the landlord failed to establish an entitlement to receive further monies from the tenant for utilities and I dismiss this portion of the landlord's claim.

Since the landlord was partially successful in this application and I award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of my findings above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant in the net amount calculated as follows:

| | |
|------------------------|-----------------|
| March 2019 rent | \$1,500.00 |
| Filing fee | 100.00 |
| Less: security deposit | <u>(750.00)</u> |
| Monetary Order | \$ 850.00 |

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing to the landlord in the amount of \$850.00.

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: July 16, 2019

Residential Tenancy Branch