



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to retain the tenant's security deposit, pursuant to section 38.

The landlords' two agents, landlord RC ("landlord") and "landlord CFW," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager and landlord CFW confirmed that she was the managing broker for the property management company. Both landlord agents confirmed that they had permission to represent the two landlord owners named in this application (collectively "landlords"). This hearing lasted approximately 57 minutes.

The tenant confirmed receipt of the landlords' 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 landlords' application and the landlords were duly served with the tenant's evidence.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for damage to the rental unit?

Are the landlords entitled to retain the tenant's security deposit?

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 July 17, 2018 for a fixed term of one year ending on June 30, 2019. The tenant vacated the rental unit on April 29, 2019. Monthly rent of \$3,400.00 was payable on the first day of each month. A security deposit of \$1,700.00 was paid by the tenant and the landlords continue to retain this deposit in full. Both parties signed a written tenancy agreement. A move-in condition inspection report was completed by both parties for this tenancy. A move-out condition inspection report was completed for this tenancy, without the tenant present. The landlords did not have written permission to keep any amount from the tenant's security deposit. The tenant provided a written forwarding address to the landlords by way of email on April 29, 2019. The landlords filed this application to retain the tenant's security deposit on May 13, 2019.

The landlords seek a monetary order of \$11,400.00 total. The landlords seek \$3,400.00 for each month from April to June 2019, as per the parties' fixed term tenancy agreement. The landlord stated that the tenant did not pay for April 2019 rent, despite his efforts to collect it. He claimed that the tenant breached the fixed term tenancy agreement for May and June 2019 rent, by leaving early on April 29, 2019. He said that the rental unit was not re-rented and the two landlord owners moved into the unit in early May 2019, after the tenant vacated. He explained that because the tenant did not pay liquidated damages or provide proper notice to leave, he is responsible for this loss.

The tenant agreed to pay the landlord \$3,400.00 for April 2019 rent. The tenant disputes the remainder of the landlords' claim for May and June 2019 rent of \$3,400.00 for each month. The tenant explained that the landlord owners contacted him privately on December 5, 2018 and February 2, 2019, and asked if he wanted to move out early because they wanted to move in to the rental unit. He said that he was told that the landlord owners wanted to move back in when he first signed the written tenancy agreement. He confirmed that he had multiple conversations with the landlord owners and the landlord on April 10, 2019, that if he paid for April 2019 rent, he would get May 2019 rent free and not have to pay for June 2019 rent. He stated that he gave notice on March 28, 2019, by email, that he was moving out at the end of April 2019.

The landlord stated that the tenant failed to pay rent on April 1, 2019, as required and agreed, and so the tenant was issued with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") before he could be issued with a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") in order to get one month free rent for May 2019.

The landlords seek \$450.00 to repair the damage to the driveway, \$700.00 to clean the oven and shower, and \$50.00 to replace the mail and suite key. The landlords did not provide copies of any estimates, quotes, invoices or receipts for this hearing. The landlord did not go through these claims in detail or the documentary evidence during the hearing, indicating the landlords' evidence "speaks for itself." He maintained that because the tenant did not attend the move-out condition inspection on April 29, 2019, he forfeited his rights to dispute the landlords' claim for damages.

The landlord maintained that the driveway repair was probably not done but he did not know if the owners repaired it when they moved back in. He claimed that he only received a quote by way of email. He explained that the tenant failed to return one of two mail keys and one of two rental unit keys, so the landlord had to rekey the unit.

The tenant testified that he could not attend the move-out condition inspection because of an important work meeting. He said that he informed the landlord, asked if his mother or daughter could attend as the tenant's agent, and the landlord failed to respond to him. The tenant confirmed that he called the landlord multiple times on April 29, 2019, after the inspection, and the landlord informed him that the rental unit looked good, he would return the tenant's security deposit, and the only thing that was not cleaned was the oven door window. The tenant claimed that the landlord also asked for a carpet cleaning invoice. He stated that he did not hear anything about costs from the landlords until they filed this application, claiming for damages and rent.

The tenant stated that he was willing to pay \$50.00 for the driveway repair, as it was not on the move-in condition inspection report and he saw the stain on a video he took of the property. The tenant said that he has a new car so he does not think he caused the stain, he does not know how or when the stain was caused, or whether it was beyond reasonable wear and tear.

The tenant claimed that he was willing to pay \$60.00 for cleaning the rental unit, as his own cleaner charges \$60.00 per hour. He maintained that there was no burn mark in the shower and the landlords charged a high cost to fix it. He said that he had no knowledge of the dark mark on the bathroom counter.

The tenant disputed the landlords' claim to replace the mail and suite keys for \$50.00. He stated that he did not know why the landlord was asking to replace the mail and suite keys, as the house was rekeyed and he returned the mail and suite keys.

Analysis

I award the landlords \$3,400.00 for April 2019 rent, as the tenant agreed to pay this during the hearing. I find that the landlords are entitled to this claim, as the tenant lived in the rental unit during April 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 he does, he may have to pay for rental losses to the landlords. I find that the landlords and tenant entered into a fixed term tenancy for the period from July 17, 2018 to June 30, 2019. In this case, the tenant ended his tenancy on April 29, 2019, prior to the end of the fixed term on June 30, 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 landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords 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 landlords 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant vacated the unit by April 29, 2019. He did not reside at the unit in May or June 2019. I find that the tenant gave appropriate notice of at least one month, to vacate by March 28, 2019. Although it was notice by email, this was the method of communication between the parties, as the landlords provided a number of emails with their application, in support of their claims. The landlords did not re-rent the unit. The landlord owners moved in to the unit in early May 2019, after the tenant vacated. Accordingly, I dismiss the landlords' application for rent loss of \$3,400.00 for May and June 2019, totalling \$6,800.00.

I award the landlords \$50.00 of the \$450.00 claimed for the driveway repair. The tenant agreed to pay this amount during the hearing. I find that the landlords failed to provide sufficient documentary evidence for this claim, as no quote or estimate was provided, nor was the email that the landlord claimed to have with the contractor. The landlord did not even know if the repair was done by the owners. The landlord also failed to go through any of the landlords' documentary evidence during the hearing. I find that the stain is a small, minor stain, as shown in the landlords' photographs, which was not referenced by the landlord during the hearing.

I award the landlords \$60.00 of the \$700.00 claimed to clean the oven and shower. The tenant agreed to pay this amount during the hearing. I find that this is a reasonable amount for the above two items, rather than the high cost of \$700.00. I find that the landlords failed to provide sufficient documentary evidence for this claim, as no receipt or invoice was provided, despite the landlord having a copy in front of him during the hearing. The landlord also failed to go through any of the landlords' documentary evidence during the hearing.

I dismiss the landlords' claim for \$50.00 to replace the mail and suite keys. The tenant disputed this cost. I find that the landlords failed to provide sufficient documentary evidence for this claim, as no receipt or invoice was provided, despite the landlord having a copy in front of him during the hearing. The landlord also failed to go through any of the landlords' documentary evidence during the hearing.

The landlords continue to hold the tenant's security deposit of \$1,700.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. I find that the tenant is not entitled to the return of double his security deposit as per section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17. The landlord applied to retain the deposit on May 13, 2019, within 15 days of the end of tenancy and receiving the tenant's written forwarding address on April 29, 2019.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit in the amount of \$1,700.00, in partial satisfaction of the monetary award. I issue a monetary order to the landlords against the tenant, for the balance of \$1,810.00.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,810.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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 landlords' 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: August 21, 2019

Residential Tenancy Branch