



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damage to and cleaning of the rental unit, and for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed they had exchanged evidence and were able to read each other's digital files. The tenant agreed he received the landlord's application and notice of hearing, as well as the amendment form the landlord completed on June 23, 2019.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The landlord's application claimed for \$200.00 for damage to a door and for cleaning, and \$1,200.00 for unpaid rent. The application requested an additional \$1,200.00 from the tenant for a total of \$2,600.00; however, the landlord was unable to explain what this amount was for and therefore, he withdrew this portion of his monetary claim during the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant for unpaid rent?

Is the landlord entitled to monetary compensation from the tenant for cleaning or damages to the unit?

Is the landlord entitled to keep the security deposit and pet damage deposit?

Is the landlord entitled to the filing fee?

Background and Evidence

This tenancy began sometime in February of 2019. Neither party was able to verify the exact date the tenancy began. There was no written tenancy agreement submitted in evidence. The landlord claimed they had a written agreement from later in the tenancy and the tenant claimed there was no written agreement.

The monthly rent was agreed to be \$1,200.00 per month, payable on the first day of the month. The parties agreed that the tenant paid the landlord a security deposit of \$600.00 and a pet damage deposit of \$200.00.

Both parties agreed there were no written condition inspection reports performed at the beginning or end of the tenancy.

The parties both testified and submitted evidence that there were various troubles during the tenancy.

The troubles that the tenant alleged he had with the rental unit and landlord led him to give the landlord a notice by text message on May 20, 2019, that he was moving out of the rental unit. The tenant vacated the rental unit on June 3, 2019.

The landlord is claiming the tenant failed to give the proper written notice and a period of one month notice as required under the Act. The landlord claims for one month of rent at \$1,200.00.

The tenant submitted that on the day he gave the landlord the text message he was moving out, the landlord had accosted his girlfriend. The tenant also explained he was tired of the problems he encountered with the electrical outlets and the stove constantly

tripping the breaker. The tenant has not made a claim for this but testified he was going to file his own application against the landlord.

The landlord also claimed for the repair of a door knob and lock at the rental unit. He testified that the tenant damaged these and left the door dirty. The landlord also testified about items that were left behind and the condition of the rental unit. In evidence the landlord submitted a photograph of the door and other areas of the rental unit that he alleges the tenant failed to clean. He alleges the tenant did not clean the area around the toilet properly, and the carpets were not cleaned. He states the tenant left garbage behind. The landlord has not repaired the door knob or lock, as he says he has no money to do this.

The tenant testified that when he moved into the rental unit the door knob was not installed properly. The tenant paid for and installed a new lock and knob. The tenant agreed he did not clean the dirt left behind on the door from this work. The tenant testified he knew the landlord was going to make a claim against him so he took many photographs of the rental unit after he cleaned it up and had moved out. The tenant submitted many of these photographs in evidence in this proceeding.

He testified he did not clean the carpets when he moved out since the landlord informed him that he was going to tear these carpets out and they were dirty when he moved in. The tenant testified that the area around the toilet was clean, but the landlord had used the wrong caulking around the toilet base.

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 sections 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.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the tenant breached section 26 of the *Act* by failing to pay rent to the landlord for June 2019. I find the tenant breached section 45 of the *Act* by failing to give the proper notice to the landlord.

Section 45 reads as follows:

(1) A tenant may end a periodic 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, and

(b) 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.

[Emphasis added.]

Furthermore, under section 53(3) of the *Act*, the tenant's incorrect Notice to End Tenancy automatically corrected to June 30, 2019.

I find the tenant failed to provide the landlord with the one month period of notice.

Therefore, I find the tenant owes the landlord \$1,200.00 for rent for the month of June 2019.

On the issue of the door knobs and locks, I find the landlord has failed to prove the tenant damaged these and did not repair these before he left the tenancy. I also find that the other cleaning alleged by the landlord was not proven, except that the tenant agreed he left the door dirty.

Therefore, I only allow the landlord the nominal amount of \$20.00 for the door cleaning, and the rest of the landlord's cleaning and damages claims are dismissed without leave to reapply.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As the landlord was successful in much of his claim, I allow him to recover the filing fee of \$100.00 from the tenant.

Therefore, I allow the landlord **\$1,320.00** for his claims, subject to the set off of the deposits as described below.

As to the deposits, I find the landlord applied against the security deposit and pet damage deposits within 15 days of the tenancy ending and I allow the landlord to retain the **\$800.00** held in partial satisfaction of the claims allowed, pursuant to section 72 of the Act.

Therefore, I grant the Landlord an order under section 67 for the balance due of **\$520.00**.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant breached the Act by failing to give the proper one month notice to end tenancy.

The landlord is compensated one month of rent and is granted a nominal amount for cleaning that the tenant acknowledged he failed to do.

The landlord is entitled to retain the deposits in partial satisfaction of the claim and is granted a monetary order under section 67 of the Act for the balance due of **\$520.00**.

The landlord must serve the tenant with this monetary order and if the tenant does not pay, the landlord may enforce the order in Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 26, 2019

Residential Tenancy Branch