



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL; MNSD

Introduction

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

- a monetary order for unpaid rent, utilities, damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

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

- authorization to obtain a return of double the amount of her security deposit, pursuant to section 38.

The tenant, the landlord, and the landlord's English language translator 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 his translator had permission to assist him at this hearing. This hearing lasted approximately 48 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.

The tenant confirmed that she provided a copy of a June 2019 \$2,300.00 bank draft to the landlord and uploaded it as evidence to the RTB website. The landlord said that he did not receive this bank draft and I confirmed that I did not receive a copy on the RTB

website either. Accordingly, I could not consider the tenant's bank draft copy at this hearing or in my decision because neither I nor the landlord received copies of it. The landlord is required to be served with this evidence by the tenant, so he has notice of her claims.

The landlord said that he wanted to claim for hydro electricity costs of \$114.66 and bailiff costs. He did not apply for these items in his application. He said that he gave a copy of the hydro invoice to the tenant. The tenant denied receipt. I notified the landlord that I could not consider these claims because he did not apply for them, he did not file an amendment to include them, and the tenant did not receive the hydro invoice or have notice of this claim.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities, damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to the return of double the amount of her security deposit?

Is the landlord entitled to recover the filing fee for his 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 March 15, 2019 and ended on June 29, 2019. Monthly rent in the amount of \$3,300.00 was payable on the 15th day of each month. A security deposit of \$1,650.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. A forwarding address was provided by the tenant to the landlord by way of text message on June 28, 2019. The landlord did not have written permission to

keep any amount from the tenant's security deposit. The landlord filed his application to retain the tenant's security deposit on August 6, 2019.

The landlord seeks a monetary order of \$2,242.21 plus the \$100.00 application filing fee. The landlord seeks unpaid gas utilities of \$222.21, which the tenant agreed to pay during the hearing. The landlord initially applied for \$220.21 but amended his application to increase it to \$222.21 during the hearing, as he said that he provided the bill to the tenant, and the tenant confirmed receipt of it.

The landlord also seeks \$480.00 to repaint the rental unit because he said the tenant was not authorized by him to paint the unit herself. The tenant disputed the painting cost, stating that the landlord allowed her to paint her children's bedrooms in the rental unit. She explained that the landlord came inside the rental unit and saw the paint numerous times, never complained, or asked her to repaint or pay for additional painting.

The landlord seeks \$1,540.00 for pro-rated rent for 14 days from June 15 to 29, 2019, which he said the tenant did not pay. The tenant disputed this claim, stating that she paid the full rent of \$3,300.00 to the landlord for June 2019. The tenant claimed that she paid \$2,300.00 by bank draft and \$1,000.00 by cash, totalling \$3,300.00, to the landlord for June 2019 rent. The tenant said that she did not have any proof of the \$1,000.00 cash withdrawal or payment. The landlord denied receiving any payments from the tenant for June 2019 rent. The tenant stated that she did not receive any receipts for June 2019 rent payments from the landlord, but she received receipts for payment of May 2019 rent.

The tenant seeks a monetary order of \$3,300.00. The landlord disputes the tenant's application. The tenant seeks the return of double the amount of her security deposit of \$1,650.00, totalling \$3,300.00. She claimed that the landlord did not return her deposit within 15 days, as required by the *Act*.

Analysis

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 on a balance of probabilities. In this case, to prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I award the landlord \$222.21 for gas utilities, as the tenant agreed to pay this amount during the hearing.

I award the landlord \$1,540.00 for unpaid rent from June 15 to 29, 2019. Both parties agreed that the tenant lived in the rental unit from June 15 to 29, 2019, so I find that she is responsible to pay for rent while she is residing in the unit, as per section 26 of the *Act*. I find that the tenant failed to provide proof of her rent payments totaling \$3,300.00. As noted above, I did not consider the tenant's bank draft because neither I nor the landlord received a copy of it. I also find that the tenant failed to provide proof of her cash withdrawal of \$1,000.00. Further, the tenant did not provide any rent receipts from the landlord for the above payments, as the landlord said that he did not receive them, but the tenant received rent receipts for her May 2019 rent payments.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application, without leave to reapply.

I dismiss the landlord's claim for painting of \$480.00. The landlord did not explain his claim during the hearing, except to say the tenant was not allowed to paint. He did not go through any receipts, indicate when he paid it, explain who did the painting, when it was done, how many people did it, what the rate was per person, and where in the rental unit it was done. I also accept the tenant's affirmed testimony that the landlord allowed her to paint in the rental unit and saw it repeatedly throughout the tenancy, without complaint or indication that the tenant would have to repaint or pay for the cost of any repainting.

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

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on June 29, 2019. The tenant provided a written forwarding address to the landlord on June 28, 2019, by way of text message. Although text message is not a valid service method under section 88 of the *Act*, the landlord confirmed that he received the address. Therefore, I find that the landlord was sufficiently served with the forwarding address as per section 71(2)(c) of the *Act*. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit to the tenant. However, the landlord filed his application on August 6, 2019, more than 15 days after the later date of June 29, 2019, the end of tenancy.

No interest is payable on the tenant's security deposit during the period of this tenancy. I find that the tenant is entitled to receive double the value of her security deposit of \$1,650.00, totalling \$3,300.00. I order the landlord to retain \$1,862.21 from the tenant's security deposit monetary award, leaving a balance owing to the tenant of \$1,437.79.

Conclusion

I order the landlord to retain \$1,862.21 from the tenant's security deposit monetary award.

I issue a monetary order in the tenant's favour in the amount of \$1,437.79 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 landlord's 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: November 25, 2019

Residential Tenancy Branch