



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S; FFL

Introduction

This hearing dealt with a landlord's application for compensation for unpaid rent, unpaid utilities and carpet cleaning; and, authorization to retain the tenant's security deposit. Both parties appeared 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.

I confirmed the parties exchanged their respective hearing documents upon each other and I admitted their materials for consideration in making this decision.

I have amended the style of cause to reflect that the rental unit was a separate basement suite from the main living unit occupied by the landlords on the property

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for unpaid rent and utilities, and carpet cleaning, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

On July 29, 2019 the parties executed a written tenancy agreement for a month to month tenancy set to commence on September 1, 2019. The rental unit is a basement suite in a house and the landlord occupied the main living unit in the house.

The tenancy agreement executed for the basement suite indicates the tenant was required to pay rent of \$1700.00 on the first day of every month. The tenancy

agreement indicates that utilities such as electricity, natural gas, heat and internet were not included in the monthly rent and the tenancy agreement indicates the tenant would pay 40% of “utilities” in addition to rent. The landlord collected a security deposit of \$850.00.

For the month of August 2019, the tenant was renting a travel trailer on the property under a separate agreement with the landlord and any dispute concerning the trailer tenancy is not the subject of this decision.

The tenant was provided early possession of the basement suite in the late August 2019 although the exact date is in dispute.

The tenancy ended on October 31, 2019 when the tenant returned possession of the rental unit to the landlord.

The landlord did not prepare a move-in or move-out inspection report.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Unpaid or loss of rent for November 2019 -- \$1700.00

The landlord seeks to recover \$1700.00 as unpaid or loss of rent for the month of November 2019. The landlord testified that on October 10, 2019 the tenant had sent a text message indicating she was giving notice to end tenancy. The landlord responded stating a written notice and a month's advance notice was required. The landlord went on to state that the tenant may end the tenancy effective November 30, 2019 and pay rent for November 2019; but, if the tenant sought to end the tenancy on October 31, 2019 the landlord would try to find new tenants and if successful the landlord would refund the security deposit but if the landlord was not successful the tenant would lose her security deposit and the landlord may seek compensation from the tenant.

The tenant gave written notice to end the tenancy on October 11, 2019 with a stated effective date of October 31, 2019.

The landlord testified that she advertised the rental unit right after receiving the tenant's written notice on three websites for the same amount of rent. Prospective tenants were shown the unit a few days later but it did not rent and interest in the unit at that time was

very low. The unit was eventually re-rented starting on December 15, 2019 for the same amount of rent.

The tenant submitted that she experienced a lack of heat in the rental unit and noises including the sounds of the landlords having sex. The tenant testified that she intended to give the landlord notice to end tenancy on October 1, 2019 if the landlords would not rectify the heat issue, but the landlord did not meet with her and decided to have sex instead.

In subsequent text messages with the male landlord the tenant told him she was looking for a new home and his response was to let him know when she found something, and he gave her a good reference to her new landlord. On October 10, 2019 the tenant secured her new rental unit and she sent the male landlord the text message giving notice. Then the female landlord took over communication with her and demanded written notice with 30 days notice.

The tenant testified that the landlord told her to indicate an effective date of October 31, 2019 on the notice in a conversation they had on October 11, 2019.

The tenant was of the position she had to move-out by October 31, 2019 for health reasons in any circumstance but that she could have given a notice to end tenancy effective November 30, 2019 had the landlord not told her to put October 31, 2019 on the written notice.

The tenant also questioned whether the rental unit was made available to be re-rented for November 1, 2019. The tenant testified that on or about November 13, 2019 she went to the property and saw the landlords renovating a hot tub and the construction materials were in the driveway and blocking the entrance to the suite. In addition, the stairs to the rental unit were ripped up.

The landlord indicated that she intended to refute the tenant's assertions regarding lack of heat. The landlord also stated that she could not show the unit before she had a firm date from the tenant as when she was going to end the tenancy. The landlord was of the position she took action to re-rent the unit for November 1, 2019 immediately after receiving the tenant's written notice and removal of an old hot tub and deck did not interfere with re-renting or showing the unit to prospective tenants. The landlord stated that there was not a lot of construction materials needed and only one step was replaced as part of doing maintenance in late October 2019.

Utilities -- \$287.00

The landlord seeks \$287.00 for unpaid utilities. This amount is the sum of 40% of electricity and gas bills for September 2019 and October 2019, plus 50% of the internet bills for the months of September 2019 and October 2019. The landlord provided copies of some utility bills in support of this claim. As for the request to recover 50% of the internet bill, the landlord submitted that the parties had an oral agreement that the internet would be split 50/50 rather than the 40% reflected in the written tenancy agreement.

The tenant testified that she paid \$97.00 to the landlord for utilities in September 2019 so she considered that she has already paid for September 2019 utilities. The tenant pointed to the text message sent to her in September 2019 whereby the landlord states \$97.00 is due for utilities for "this month". The tenant acknowledged that she did not pay for utilities for the month of October 2019 because the landlord was withholding her security deposit.

The landlord acknowledged the tenant paid \$97.00 in September 2019 but that her request for \$97.00 was for "this month" refers to the previous month (August 2019) since the utility bills are received in the month following the consumption period. The tenant responded that she was not required to pay for utilities for August 2019 as the agreement for rental of the trailer in August 2019 did not require her to pay for utilities.

Carpet cleaning -- \$100.00

The landlord submitted that the tenant had a dog in the rental unit and the carpets were stained at the end of the tenancy. The landlord submitted a carpet cleaning receipt showing the landlord had the carpets cleaned in August 2019 at a cost of \$112.00. The landlord testified that she had the carpets professionally cleaned again after the tenancy ended although she did not submit the receipt as evidence.

The tenant acknowledged she had a dog but submitted that she cleaned the carpets by borrowing a carpet cleaning machine from a friend. The tenant provided a photograph of the carpet cleaning machine and text messages with the friend that lent her the machine to demonstrate she cleaned the carpets. The tenant acknowledged that there were persistent stains, but that the stains were pre-existing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

The landlord has the burden of proof in this case. the burden of proof is based on the balance of probabilities. it is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

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

Unpaid rent for November 2019

Section 45(1) provides for how a tenant ends a month to month tenancy. It provides as follows:

- 45** (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.

Section 52 of the Act provides that a notice to end tenancy must include the signature of the party giving notice, the date of notice and the effective date for the end of tenancy, among other things. Section 88 of the Act further provides for ways a document, including a notice to end tenancy, must be served upon the other party. Section 88 does not recognize service by text message or email service.

Since the tenant was required to pay rent on the first day of the month, to end the tenancy effective October 31, 2019 the tenant would have to give the landlord a written notice no later than September 30, 2019. The tenant did not do so in this case and did not give a written notice until October 11, 2019. Accordingly, I find the tenant violated the notice requirements of section 45(1) of the Act in ending the tenancy effective October 31, 2019.

Section 45(3) provides a mechanism for a tenant to end a tenancy earlier than the ordinary notice requirements where the landlord has breached a material term of the tenancy agreement. The tenant raised issues with respect to lack of heat and noise. Lack of heat or unreasonable noise may constitute a breach of quiet enjoyment of a rental unit which is viewed as a material term of a tenancy agreement. Accordingly, if the tenant was of the position she was suffering from a loss of quiet of enjoyment she may have ended the tenancy early under section 45(3) of the Act. Section 45(3) provides as follows:

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

[My emphasis underlined]

The tenant asserted that she suffered a loss of heat and quiet enjoyment and the landlord appeared prepared to respond to those assertions; however, I found it unnecessary to further explore whether the landlord breached the tenant's right to quiet enjoyment or provide adequate heat since the tenant did not serve the landlord a written notice of a breach.

Rather, the only written notice given by the tenant merely provides (with personal information redacted):

October 11, 2019

Notice to vacate tenancy.

This letter is to provide notice to end residential tenancy at [REDACTED].
Last day of residency will be October 31 at 1:00pm.

Our forwarding address will be:

[REDACTED]

Considering the above, I find the tenant failed to take sufficient action to end the tenancy in a manner that complies with section 45(3) of the Act.

Having found the tenant failed to give sufficient notice to end the tenancy, I turn my mind to whether the landlord took reasonable steps to mitigate losses. The landlord testified that she advertised the rental unit on multiple web sites and showed the unit shortly after receiving the tenant's notice and that was not disputed by the tenant. The tenant confirmed there was a showing shortly after giving her notice to end tenancy; however, the tenant alleged that renovations taking place at the property interfered with finding replacement tenants. The tenant provided one photograph showing a small set of stairs with a step missing. The landlord refuted the tenant's position, acknowledging one step was replaced but denying any other renovation activity prevented the rental unit from being re-rented. Ultimately, I find there to insufficient evidence to support the tenant's position concerning renovations and I accept that the landlord took sufficient action to mitigate losses.

In light of all of the above, I grant the landlord's request to recover loss of rent for November 2019 in the amount of \$1700.00.

It should be noted that although I have granted the landlord's request for unpaid and/or loss of rent for November 2019, the tenant remains at liberty to pursue the landlord for compensation for loss of quiet enjoyment, if any, by filing her own Application for Dispute Resolution.

Unpaid utilities

The tenancy agreement indicates that utilities such as electricity, gas, heat and internet were not included in rent and that the tenant would pay 40% of utilities. I uphold this term and find the landlord entitled to 40% of the electricity, gas and internet bills for September and October 2019.

I deny the landlord's request for 50% of the internet bills. Since there was a written tenancy agreement in place that clearly provides for 40% of utilities, the parties ought to

have amended the written agreement if they sought to change the tenant's share of the internet bill, but they did not, and I do not uphold an oral agreement over a written agreement.

As for the payment the tenant made to the landlord in September 2019, I find the landlord's request for payment for utilities for "this month" in the text message does not clearly communicate that the landlord is actually asking for utilities for the month of August 2019. Nor, do I see that the landlord attached copies of the bills so that the tenant could see the consumption period. As such, I find the tenant's interpretation that "this month" means utilities for September 2019 to be within reason, especially when I consider that internet charges are actually billed in advance of consumption.

In keeping with the above, I shall give the tenant credit for the \$97.00 payment she made to the landlord in September 2019 for utilities owing for September 2019 and October 2019 and if the landlord has suffered unpaid utilities for August 2019 as a result the landlord may pursue a monetary claim against the tenant for that tenancy agreement under a separate Application for Dispute Resolution.

The landlord provided the gas bills for September 2019 and October 2019 showing these bills totalled \$38.32 and \$74.23 respectively. I find the landlords request to recover \$15.32 and \$29.69 from the tenant for these bills to be accurate and I award these amounts to the landlord.

The landlord provided one electricity bill for the period of September 5, 2019 to October 2019. The electricity consumed cost \$124.51; however, the landlord seeks 40% of \$221.00 which is the amount of the equal payment plan payment for each month. I find the landlord's calculation based on the equal payment plan to be unreasonable in this case. Had the tenancy lasted a year, charging an amount based on the equal payment plan would be reasonable as there is a reconciliation at least every year to reflect actual usage; however, this tenancy was only two months in duration and during warmer

months. Therefore, I find it appropriate to base the calculation on the actual electricity cost, not the equal payment plan.

Since I was only provided one bill for electricity, I have based the calculation on this one bill. I award the landlord electricity in the amount of $\$124.51 \times 40\% = \49.80 per month $\times 2$ months = $\$99.60$.

As for the internet, the landlord provided a bill showing a monthly cost of $\$67.20$ and I award the landlord 40% of this amount for each month. I award the landlord $\$67.20 \times 40\% \times 2$ months = $\$53.76$.

After taking into account the $\$97.00$ payment the tenant made toward utilities, I find the landlord still entitled to receive $\$101.37$ from the tenant for utilities, calculated as follows:

Gas – September 2019	\$ 15.32
Gas – October 2019	29.69
Electricity – September and October 2019	99.60
Internet – September and October 2019	53.76
Less payment made in September 2019	<u>(97.00)</u>
Utilities owing	\$101.37

Carpet cleaning

Section 37 requires that a tenant leave a rental unit reasonably clean at the end of the tenancy and undamaged. A tenant is not required to rectify damage that existed before the tenancy started.

Where a tenant has a pet in the rental unit Residential Tenancy Policy Guideline 1 provides that a tenant will ordinarily be held responsible to clean the carpets, regardless of the length of the tenancy.

In this case, the tenant had a dog in the unit, and she submitted evidence that she cleaned the carpets but that there were pre-existing stains.

The landlord submitted that there were stains that did not come out despite the tenant's efforts and she had to have the carpets professionally cleaned again after the tenancy ended. However, the landlord did not provide a copy of a carpet cleaning invoice dated

after the tenancy ended and the landlord did not prepare a move-in inspection report to demonstrate the condition of the carpets at the start of the tenancy.

In light of the above, I find the conflicting evidence, in the absence of other proof from the landlord, insufficient to satisfy me that the landlord is entitled to \$100.00 for carpet cleaning and I dismiss this portion of the landlord's claim.

Filing fee, security deposit and Monetary Order

The landlord's claim had merit and I award the landlord recovery of the \$100.00 filing fee.

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

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

Unpaid/loss of rent for November 2019	\$1700.00
Utilities owing	101.37
Filing fee	100.00
Less: security deposit	<u>(850.00)</u>
Monetary Order for landlord	\$1051.37

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1051.37 to serve and enforce upon the tenant.

I have made no findings as to whether the tenant suffered a loss of quiet enjoyment as it was not relevant in making this decision; however, the tenant is at liberty to make her own Application for Dispute Resolution if she seeks compensation for such.

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: March 27, 2020

Residential Tenancy Branch