Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL, MNRL-S FFT, MNSD**

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the "*Act*").

The landlord applied for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of the security and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective hearing package. Based on the testimonies I find that each party was duly served with the materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is either party entitled to the security and pet damage deposit?
Is either party entitled to recover the filing fee from the other?

Background and Evidence

This fixed term tenancy began in March 2019. Monthly rent was $1,450.00 payable on the first of each month. A security deposit of $725.00 and pet damage deposit of $725.00 were paid at the start of the tenancy and is still held by the landlord.

The tenants gave written notice to end the tenancy by a letter dated October 15, 2019. The tenants vacated the rental unit by the end of the month. The tenants testified that they had initially proposed an end of tenancy date of November 14, 2019 but the landlord did not accept their proposal. The tenancy ended by the end of October 2019.

The parties participated in a move-out inspection on November 1, 2019 and a condition inspection report was prepared. A copy of the report was submitted into evidence and indicates that no deductions were to be made from the deposits for this tenancy. The tenants provided a forwarding address on the report.

The tenants submit that they did not authorize any deductions from the deposits and seek a full return of the security and pet damage deposit for this tenancy. During the hearing the tenants did authorize a deduction of $106.49 from the deposits for unpaid utilities but did not approve of any other deductions.

The landlord submits that they did not consent to the early end of tenancy date. The landlord seeks a monetary award in the amount of $1,450.00, equivalent to one month's rent as they were unable to find a new occupant for the rental suite until December 1, 2019. The landlord also submits that they incurred various costs for travel to the rental suite, showing the suite to potential new occupants and the costs related to filing and serving the present application. The landlord also says that they needed to change the keys to the suite. The landlord submitted the invoices and receipts for their costs totaling $558.75.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain a security and pet damage deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenants provided a forwarding address in writing on the move-out condition inspection report dated November 1, 2019 and the landlord filed their application for dispute resolution on November 7, 2019. As such, I find that the landlord was within the 15 days provided under the Act to file an application for authorization to retain the deposits.

The tenant confirmed that they agreed with a deduction of $106.49 from the deposits for this tenancy. Accordingly, I issue a monetary award in that amount in the landlord's favour.

Section 45 (2) of the *Act* explains that a tenant may end a fixed-term tenancy by giving the landlord notice on a date not earlier than the date specified in the tenancy agreement and no earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on October 15, 2019 and the tenancy agreement specifies that rent is payable on the first of each month, the effective date of the end of tenancy was November 30, 2019. I find that the tenants were obligated to pay the monthly rent in the amount of $1,450.00 on November 1, 2019. I accept the evidence of the landlord that the tenants failed to pay the full rent on that date.

Section 67 of the *Act* establishes that if damage or loss results from the breach of the Act, regulations or tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their losses.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results… A landlord who claims compensation for damage or loss

that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case I accept the evidence of the parties that the landlord took measures to mitigate their rental income losses by showing the rental unit to potential occupants. I do not find that the landlord was obligated to accept the tenant's proposal to set the end of tenancy date for mid-November. While the landlord would have received some rental funds from the tenants by accepting their proposal, I accept that it would have been more difficult to find a new occupant for the middle of the month. I find that the landlord acted reasonably in advertising the suite, engaging a property management company to assist in the screening process and finding a new occupant to reside in the suite as of December 1, 2019. As such, I find that the landlord took reasonable steps to mitigate their losses.

I accept that despite the landlord's reasonable and best efforts they incurred a loss of rental income for the month of November 2019 in the amount of $1,450.00. Accordingly, I issue a monetary award in the landlord's favour for that amount.

I find that the balance of the items claimed by the landlord are not attributable to the tenants but simply the costs associated with managing and renting property. The engagement of a property management company or traveling to the rental property are not costs that arise due to a contravention by the tenants but part of the expected costs of doing business renting residential property.

I also find that the cost of getting new locks and keys for the rental property is not a cost that results from the tenants. The condition inspection report signed by both parties show that all keys were returned at the end of the tenancy. There was no need to have new locks installed or keys issued. This was a choice made by the landlord but not something that was required due to a breach by the tenants.

Additionally, the cost of registered mail to serve the tenants with the present application is not a cost borne out of a breach by a party but simply the costs associated with pursuing a claim.

For the above reasons, I dismiss the landlord's application for a monetary award for these items.

As neither party was wholly successful in their claim I decline to issue an order allowing for the recovery of filing fees.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of $206.49 under the following terms:

Item	**Amount**
Unpaid Rent November 2019	$1,450.00
Unpaid Utilities Agreed by the Parties	$106.49
Filing Fees	$100.00
Less Security & Pet Damage Deposit	-$1,450.00
TOTAL	**$206.49**

The tenants 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.

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