



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**

Introduction

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

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:15 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenant with the Application for Dispute Resolution by registered mail on November 17, 2019. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified he was not provided with a forwarding address by the tenant when she moved out; he knew the tenant had registered a change of address notification with Canada Post and that Canada Post redirected the Application for Dispute Resolution to the tenant's new

address. The landlord advised that the tenant had signed for delivery of the package on November 21, 2019 and that the signature on the delivery confirmation was the same as the one on the tenancy agreement. Based on the landlord's undisputed testimony, I deem the Notice served on November 22, 2019, five days after being sent by registered mail pursuant to sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation?

Can the landlord recover the filing fee?

Can the landlord retain the security deposit?

Background and Evidence

The landlord provided the following undisputed testimony. The tenancy began on July 1, 2019 with rent set at \$1,550.00 per month and an additional \$150.00 per month for utilities pursuant to an addendum to the tenancy agreement. Rent and utilities were payable on the first day of each month. The tenant paid a total of \$1,700.00 for rent and utilities each and every month until September 30th, when the tenant stopped paying both.

The landlord notes clause 4 of the tenancy agreement addendum which reads:

The carpets in the suite must be professionally steam cleaned prior to the final date of occupancy, at the tenants cost, as per provincial regulations. A photographic record will be maintained by the Landlord for comparison.

On October 1, 2019 at approximately 10:00 p.m., the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for rent that was due on October 1. The landlord received a one month notice to end tenancy from the tenant within minutes of serving the tenant notice by posting it to her door. The tenant's notice indicated an effective date of October 31, 2019. The tenant moved out on that day.

The landlord testified the tenant did not pay rent for the month of October in the amount of \$1,550.00 or utilities in the amount of \$150.00, totalling \$1,700.00. At the conclusion of the tenancy, the tenant failed to clean the carpets. The landlord did not have the carpets cleaned when the tenancy ended, instead he gave the next set of tenants a discount so that they would clean the carpets. The landlord did not provide documentary evidence to support this statement.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. Based on the undisputed evidence of the landlord, I find that the tenant did not have any right to deduct any portion of the rent, was obligated to pay rent and utilities in the amount of \$1,550.00 plus \$150.00 for the month of October and failed to do so. The landlord is entitled to a monetary order in the amount of \$1,700.00 pursuant to section 67.

Residential Tenancy Branch Policy Guideline PG-1 provides guidance regarding landlords and tenants' responsibilities for the residential premises. The guideline states: *The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*

...

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable.

The landlord points to the clause in the addendum to the tenancy agreement whereby the tenant is required to clean the carpets. I find this clause to be unenforceable as it contradicts section 32 of the *Act* regarding the obligations of the landlord and tenant to repair and maintain the rental unit. Section 32(2) of the *Act* states that the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. There is no requirement under the *Residential Tenancy Act* for a tenant to professionally steam clean the carpets at the end of a tenancy lasting less than one year. Further, the landlord has not provided sufficient evidence to show there was any damage done to the carpets exceeding normal wear and tear. This portion of the landlord's claim is dismissed.

The landlord seeks to retain the security deposit in partial satisfaction of his monetary order.

Section 38(1) of the *Act* states:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- a) the date the tenancy ends, and
- b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 states:

Despite any other provision of this *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- a) the landlord may keep the security deposit or the pet damage deposit, or both,
- and

- b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The landlord testified he has not yet received the tenant's forwarding address. As such, I find the landlord's application to retain the security deposit to be premature. I dismiss the landlord's application to retain the security deposit with leave to reapply if the tenant serves him with the forwarding address in accordance with the *Act*. The landlord is cautioned he must comply with section 38 of the *Act* within 15 days if he is served with the tenant's forwarding address.

As the landlord was successful in his application, the landlord can recover the \$100.00 filing fee paid for the application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,800.00**.

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