



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. Each Party confirmed receipt of the other Party’s evidence. The Tenant confirms that its email address as provided in the application is correct.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on April 1, 2018 and ended on October 30, 2019. Rent started at \$1,600.00 payable on the first day of each month and during the tenancy increased to \$1,640.00. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report signed and copied to the

Tenant. The Landlord received the Tenant's forwarding address on November 4, 2019. The Landlord has not returned the security deposit to the Tenant.

The Landlord states that the Parties mutually conducted a move-out inspection with a report provided to the Tenant for signature with a copy provided to the Tenant. The Tenant states that the Landlord went through the unit on its own, informed the Tenant upon arrival that the unit was good and did not present any copy of an inspection report to the Tenant to view or sign. The Tenant states that it did not receive a copy of the move-out report until provided as evidence for this hearing. The Landlord states that it is not sure why the report was not signed.

The Parties agree that on October 4, 2019 the Landlord received the Tenant's notice to end tenancy for October 31, 2019. The Landlord states that the unit was advertised immediately online on a number of sites. The Landlord states that it thinks the unit was advertised from the start at \$1,600.00 per month and that the rental amount was dropped every couple of weeks by \$25.00 or \$50.00 per month. The Landlord states that the next tenancy for the rental unit started January 1, 2020 at monthly rent of \$1,500.00 per month.

The Tenant states that the Landlord first advertised the unit at a rental rate of \$1,665.00 per month. The Tenant provides a copy of this advertisement found online October 12, 2019. The Tenant states that the Landlord then reduced the rental rate to \$1,600.00. The Tenant provides a copy of this advertisement found online October 25, 2019. The Tenant states that the Landlord then reduced the rental rate to \$1,550.00. The Tenant provides a copy of this advertisement found online prior to the end of November 2019. The Landlord does not dispute this advertising evidence.

The Landlord states that the Tenant did not clean the carpet at the end of the tenancy. The Landlord states that the carpet is original to the building and was new in 1997 or 1998. The Landlord states that the carpet was noted as stained and old at move-in.

The Landlord states that the unit was provided to the Tenant with a professionally cleaned carpet and that the tenancy agreement required the Tenant to have the carpet professionally cleaned. The Landlord states that no cleaning was done and that the invoice provided by the Tenant as evidence of cleaning is fraudulent. The Landlord states that it was unable to locate the business named on the invoice through searches and that when the business phone number was called it went to the Tenant's voice mail. The Tenant states that it was a co-worker with a side business who cleaned the carpet. The Tenant states that the Landlord called the Tenant's phone number that was also provided on the invoice. The Tenant states that after cleaning the carpet the stains were still there. The Landlord states that it is not disputing that the stains would be present but that the Tenant did not clean it at all. The Landlord states that it had the carpet cleaned just prior to the next tenancy. The Landlord claims \$196.00. The Landlord clarifies that this is the cost the Tenant provided with its invoice not the Landlord's costs for cleaning. The Landlord did not provide a receipt for its cleaning costs.

Analysis

Section 37(2) of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7(1) of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. While the Tenant may or may not have cleaned the carpet, given the undisputed evidence of the age and state of the carpet at move-in, I consider that the carpet was likely aged so much that no amount of cleaning would leave it reasonably clean. Nonetheless, given the lack of any evidence of cleaning costs incurred by the Landlord, I find that the Landlord has not substantiated that it incurred any costs for cleaning the carpet and I dismiss this claim.

Section 45(1) of the Act provides that 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 7(2) of the Act provides that a landlord or tenant 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. It is undisputed that the Tenant did not give a full month's notice to end the tenancy causing the Landlord to have 4 fewer days that it otherwise would have had to look for another tenant. Given the Landlord's vague evidence of rental prices being sought for the new tenancy and given the undisputed evidence of advertising rates and dates, I find on a balance of probabilities that the Landlord advertised the unit for \$1,665.00 for the majority of October 2019. By doing so I find that the Landlord did not act reasonably to minimize its loss of rental income. Further, given the evidence of rental advertising, I find that the Tenant's notice being short 4 days did not cause the lost rental income but was caused by the Landlord's own acts in seeking a higher rent than could be supported by the market. As a result, I dismiss the Landlord's claim for lost rental income.

As the Landlord's claims for damages and compensation have not been successful, I dismiss the claim for recovery of the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the security deposit plus zero interest of **\$800.00** to the Tenant forthwith.

Conclusion

The application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$800.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 1, 2020

Residential Tenancy Branch