



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL (Landlord)
 MNSD (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Tenants filed the application October 23, 2019 (the “Tenants’ Application”). The Tenants sought return of the security deposit. At the hearing, the Tenants confirmed they are seeking double the security deposit back.

The Landlord filed the application November 10, 2019 (the “Landlord’s Application”). The Landlord sought compensation for damage to the rental unit, compensation for monetary loss or other money owed, to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Landlord appeared at the hearing with her daughter D.K. who spoke for the Landlord during the hearing. The Tenants appeared at the hearing with the two Advocates.

I explained the hearing process to the parties who did not have questions when asked. The Tenants, Landlord and D.K. provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to recover unpaid rent?
5. Is the Landlord entitled to keep the security deposit?
6. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

| Item | Description | Amount |
|------|---------------------------------|-------------------|
| 1 | Call out to unit by handyman | \$150.00 |
| 2 | Cost to replace lock and labour | \$231.98 |
| 3 | Unpaid rent October 2019 | \$850.00 |
| 4 | Loss of rent | \$2,550.00 |
| 5 | Repair of bathroom fan | \$96.31 |
| 6 | Filing fee | \$100.00 |
| | TOTAL | \$3,978.29 |

A written tenancy agreement was submitted as evidence. The tenancy started February 01, 2019 and was for a fixed term ending February 01, 2020. Rent was \$850.00 per month. The Tenants paid a \$425.00 security deposit.

The tenancy agreement is only signed by the Landlord and Tenant F.H. Both parties agreed Tenant B.A. was a tenant under the tenancy agreement.

D.K. testified that rent was due on the first day of each month. D.K. confirmed the tenancy agreement in evidence is accurate.

Tenant F.H. testified that it is not his signature on the tenancy agreement. The Advocate confirmed the tenancy agreement in evidence is accurate. Tenant F.H. then acknowledged it is his signature on the tenancy agreement.

The Tenants testified that they vacated the rental unit September 30, 2019. D.K. testified that the Tenants vacated October 15, 2019.

Tenant F.H. testified that the Tenants gave the Landlord their forwarding address in a letter by hand September 30, 2019. The Advocate said the letter was put in the Landlord's mailbox September 30, 2019. Tenant F.H. then testified that he put it in the mailbox at the Landlord's address on September 30, 2019. Tenant B.A. testified that the Tenants put the letter in the Landlord's mailbox and took photos of this. Tenant B.A. testified that the keys for the rental unit were put in the mailbox with the letter.

D.K. testified that the Landlord received the forwarding address in a letter for the first time with the hearing package for the Tenants' Application. The Landlord testified that she did not otherwise receive the September 30, 2019 letter from the Tenants.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

A Condition Inspection Report (CIR) was submitted showing a move-in inspection was done January 31, 2019, the CIR was completed and both parties signed it.

Tenant F.H. testified that the Tenants received the CIR the day they moved in. He then changed his testimony and said the Tenants did not get it until they received the Landlord's hearing package and evidence. When asked about the change in testimony, Tenant F.H. testified that the Tenants received the CIR but then the Landlord took it back and said they would receive it later, but they never did.

D.K. testified that the CIR was given to the Tenants February 07, 2019 with the tenancy agreement in person.

Tenant F.H. testified as follows in relation to the end of the tenancy. The Tenants gave the Landlord written notice about vacating in person September 06, 2019. The Tenants mailed a letter to the Landlord about vacating September 15, 2019. The Tenants did not receive a response from the Landlord. The Tenants wrote the final letter September

30, 2019 and got no response. This was the letter placed in the Landlord's mailbox with the key to the rental unit.

The Advocate advised that the Tenants vacated the rental unit September 30, 2019 and did not return to the rental unit.

D.K. testified that a 10 Day Notice was posted to the door of the rental unit October 02, 2019. D.K. testified that the Tenants never replied to this. D.K. denied that the Landlord received a notice from the Tenants about vacating. D.K. testified that the Landlord never received keys back from the Tenants.

D.K. testified as follows in relation to a move-out inspection. The Landlord completed the move-out inspection on October 15, 2019. A Notice of Final Opportunity to Schedule a Condition Inspection was posted on the door of the rental unit. The Landlord also tried to reach the Tenants by text and phone about the move-out inspection.

The Tenants denied receiving texts or calls from the Landlord about the move-out inspection.

Call out to unit by handyman

D.K. testified as follows. The Tenants asked for repairs to the oven and fan. The Landlord arranged for a handyman to attend. The handyman attended but the Tenants did not let him in. The handyman could not do the repairs but charged for his time. A letter has been provided in relation to this.

The Advocate advised that the Tenants never received notification that the handyman was attending the rental unit. Tenant F.H. testified that the Tenants did not receive notice from the Landlord about the handyman.

Cost to replace lock and labour

D.K. testified as follows. The Tenants did not return the keys to the rental unit. The Landlord had to change the locks to the rental unit to secure it. A receipt for this has been submitted.

The Advocate advised that the Tenants returned the keys and put them in the Landlord's mailbox September 30, 2019. The Advocate also questioned the receipt and cost of replacing the lock.

Unpaid rent October 2019

D.K. testified as follows. The Landlord did not receive notice that the Tenants were vacating. There was no way the Landlord could re-rent the unit for October.

The Advocate advised that the Tenants gave notice three times in September that they were vacating. The Advocate acknowledged the Tenants did not give proper notice ending the fixed term tenancy. The Advocate submitted that the Landlord had breached a material term of the tenancy agreement.

D.K. denied that the Landlord ever received notice from the Tenants outlining a breach of a material term by the Landlord.

Loss of rent

D.K. testified as follows. The Tenants breached the fixed term tenancy. The Landlord is seeking rent for the remainder of the fixed term tenancy. The rental unit was not re-rented until February 01, 2020. Given the location of the rental unit, which is in a cold climate, people were not moving during winter. The unit was posted on a rental website October 25, 2019 for the same rent amount. The Landlord received some inquiries but the references for the people interested did not check out.

The Landlord submitted an undated screen shot of a rental advertisement.

The Advocate questioned why the Landlord had trouble re-renting the unit in the current housing market.

Repair of bathroom fan

D.K. sought the cost to repair the bathroom fan on the basis that the Tenants left it running continuously. She testified that the fan burned out and had to be replaced. D.K. said the Tenants were told not to leave the fan on all the time.

The Tenants denied that they were told not to leave the bathroom fan on all the time. Tenant B.A. testified that the Landlord's maintenance person told them to leave it on.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning “it is more likely than not that the facts occurred as claimed”.

Section 7 of the *Residential Tenancy Act* (the “*Act*”) states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR, I am satisfied the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

I am not satisfied based on the evidence provided that the Landlord offered the Tenants two opportunities to do a move-out inspection. There is insufficient evidence before me to support that the Landlord called or sent text messages to the Tenants about this and the Tenants denied receiving any. I am not satisfied the Tenants extinguished their rights in relation to the security deposit under section 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished her right to the security deposit under sections 24 or 36 as extinguishment only relates to claims for damage and the Landlord has claimed for unpaid rent and loss of rent.

I am not satisfied the Tenants provided the Landlord their forwarding address in writing on September 30, 2019. The Tenants did submit a letter dated September 30, 2019 with their forwarding address in it. However, the Tenants did not submit further evidence to support their position that they put the letter in the Landlord's mailbox September 30, 2019 despite Tenant B.A. saying the Tenants took photos of this.

I am satisfied the Landlord did not receive the Tenants' forwarding address until receiving the hearing package and evidence for the Tenants' Application. It is not sufficient for tenants to provide their forwarding address for the first time on or with an Application for Dispute Resolution. Tenants are required to provide their forwarding address separately and prior to making an Application for Dispute Resolution for return of the security deposit.

I find section 38 of the *Act* had not been triggered at the time the Landlord filed the Landlords' Application and therefore the Landlord complied with section 38(1) of the *Act*. Given the Landlord complied with section 38(1) of the *Act*, the Tenants are not entitled to double the security deposit back under section 38(6) of the *Act*.

Call out to unit by handyman

I am not satisfied based on the evidence provided that the Tenants were given notice or told that the handyman was attending the rental unit as the Tenants denied they received such notice and the Landlord has not submitted sufficient evidence showing otherwise.

Further, if the Landlord wished to enter the rental unit to do repairs, the Landlord should have served the Tenants notice under section 29 of the *Act*. There is insufficient evidence before me that the Landlord did this.

I am not satisfied the Tenants breached the *Act*, *Regulations* or tenancy agreement in relation to this issue. I decline to award the Landlord the compensation sought.

Cost to replace lock and labour

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must...

(a) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

D.K. testified that the Tenants did not give their keys back at the end of the tenancy. The CIR supports this. The Tenants testified that they did give the keys back. However, the Tenants did not submit further evidence to support their testimony on this such as the photos which Tenant B.A. said they took.

I am satisfied the Tenants failed to return the keys. I am satisfied the Tenants breached section 37 of the *Act*. I am satisfied the Landlord had to change the locks to secure the rental unit. I am satisfied based on the receipt submitted that this cost \$231.98 for the lock and labour. I do not find this amount excessive. The Tenants did not submit evidence to show the lock could have been replaced for less. I am satisfied the Landlord is entitled to recover the \$231.98.

Unpaid rent October 2019

Section 45(2) and (3) of the *Act* states:

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(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.

I am satisfied the Landlord did not receive notice that the Tenants were vacating. The Tenants testified that they gave written notice three times in September. I would expect there to be a clear record of this occurring and clear evidence of such given the importance of giving notice to end a tenancy. The Tenants submitted the September 30, 2019 letter but did not submit evidence to support their testimony about a September 06, 2019 or September 15, 2019 letter. The Tenants did not submit further evidence to support their testimony that they put the September 30, 2019 letter in the Landlord's mailbox despite Tenant B.A. saying that the Tenants took photos of this. The Tenants did not submit evidence of mailing a September 15, 2019 letter. In the absence of further evidence showing the Tenants gave notice, I am not satisfied that they did.

I also note that, even if I had accepted that the Tenants gave notice September 06, 2019, which I do not, this was not even one month's notice to vacate.

Further, this was a fixed term tenancy. The Tenants were not entitled to end the tenancy early except under section 45(3) of the *Act*. I do not accept that the Tenants complied with this as there is no documentary evidence before me to support that they did. I would expect the Tenants to have a record of ending the tenancy in accordance with section 45(3) of the *Act* if they did so.

I am satisfied the Tenants breached section 45(2) of the *Act* by ending the fixed term tenancy early. I am satisfied the Landlord did not receive notice that the Tenants were vacating and therefore am satisfied the Landlord could not have re-rented the unit for October. I am satisfied the Landlord lost October rent due to the Tenants' breach. I am satisfied the Landlord is entitled to recover \$850.00 for October rent.

Loss of rent

I have found that the Tenants breached section 45(2) of the *Act* by ending the fixed term tenancy early. I am satisfied the Landlord lost rent for the remainder of the tenancy agreement due to this breach as the Tenants did not dispute this.

However, I am not satisfied the Landlord mitigated the loss. The only evidence submitted to support the position that the Landlord posted the unit for rent and fulfilled her obligations to mitigate loss is an undated screen shot of a rental advertisement. I do not find this to be compelling evidence that the Landlord took reasonable steps to mitigate the loss. Further, I am not satisfied that the Landlord could not have rented the unit for three months in the absence of further evidence showing the reasons for this as it is a long time. I do not accept that the weather explains this delay in the absence of further evidence to support this.

I am not satisfied the Landlord is entitled to loss of rent for three months.

Repair of bathroom fan

I am not satisfied the Tenants breached the *Act*, *Regulations* or tenancy agreement by running the bathroom fan continuously. I am not satisfied the Landlord told the Tenants not to do this as the parties disagreed about this and there is no further evidence before me to support the Landlord's position. I do not find it negligent or unreasonable for the Tenants to have run the bathroom fan continuously in the absence of being told not to. I am not satisfied the Landlord is entitled to the compensation sought in relation to this.

Filing fee

Given the Landlord was partially successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord is entitled to the following compensation.

| Item | Description | Amount |
|------|---------------------------------|----------|
| 1 | Call out to unit by handyman | - |
| 2 | Cost to replace lock and labour | \$231.98 |
| 3 | Unpaid rent October 2019 | \$850.00 |
| 4 | Loss of rent | - |
| 5 | Repair of bathroom fan | - |

| | | |
|---|--------------|-------------------|
| 6 | Filing fee | \$100.00 |
| | TOTAL | \$1,181.98 |

The Landlord is entitled to \$1,181.98. The Landlord can keep the \$425.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, the Landlord is issued a monetary order for the remaining \$756.98.

Conclusion

The Landlord is entitled to \$1,181.98. The Landlord can keep the \$425.00 security deposit. The Landlord is issued a monetary order for the remaining \$756.98. This order must be served on the Tenants as soon as possible. If the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Tenants' Application is dismissed without leave to re-apply.

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 01, 2020

Residential Tenancy Branch