



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD (Tenant)
 MNRL-S, FFL (Landlord)

Introduction

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

The Tenant filed the application October 25, 2019 (the “Tenant’s Application”). The Tenant sought compensation for monetary loss or other money owed and return of the security deposit. At the hearing, the Tenant confirmed she is seeking return of double the security deposit. The Tenant also confirmed she is seeking \$1,600.00 for lung damage.

The Landlord filed the application November 08, 2019 (the “Landlord’s Application”). The Landlord sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties 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 all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

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

Background and Evidence

As stated, the Tenant sought return of double the security deposit and \$1,600.00 in compensation for lung damage. The Tenant's Application also refers to compensation for cleaning and laundry.

The Landlord sought \$1,127.00 for October rent and \$100.00 for the filing fee.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 15, 2018 and was a month-to-month tenancy. Rent was \$1,100.00 per month. The parties agreed rent was due on the first day of each month. The Tenant paid a \$550.00 security deposit.

The Tenant testified that she provided the Landlord with her forwarding address by text October 08, 2019. This text was in evidence.

The Landlord submitted that providing the forwarding address by text or email is not sufficient. The Landlord did not otherwise take issue with the forwarding address provided.

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

The Landlord testified that there was no formal move-in inspection done. The parties agreed the Tenant was not provided two opportunities to do a move-in inspection.

The parties agreed no move-out inspection was done and the Tenant was not offered two opportunities to do a move-out inspection.

The Tenant testified as follows in relation to her claim for \$1,600.00 for lung damage. The Landlord was adamant about renovating the rental unit after she moved in. The rental unit is a studio. The renovation caused there to be dust everywhere. She has asthma. Her chest tightened and she could not breathe. She had to go stay in a hotel for a night. When she returned to the rental unit it was a disaster. Areas with mold were not sealed or remediated. She has had lung problems since.

The Tenant relied on photos in evidence.

The Landlord denied there was mold in the rental unit. He testified as follows. There was a small stain on the ceiling of the rental unit. He had a restoration company attend and they made sure there was no moisture. The stain was tarped over. Another restoration company did the work on the ceiling. The Tenant was concerned about the odor and condition of the rental unit. He paid for the Tenant to stay in a hotel for the night. He received an email from the Tenant thanking him for the hotel and saying things were better in the rental unit. The renovations were stopped indefinitely. The Tenant did not complain about smell or dust again.

The Landlord submitted that there is no evidence of mold in the rental unit. He submitted that there is no evidence that the Tenant got sick from mold in the rental unit. The Landlord testified that the work in the rental unit occurred over one day.

The Landlord submitted an email from the restoration company that worked on the ceiling stating that the rental unit was left in a livable state, the holes were sealed and out of the way and additional precautions were taken for dust control.

The Tenant agreed the work in the rental unit occurred in one day and then was postponed.

The Landlord testified as follows in relation to unpaid rent for October. The Tenant failed to pay October rent. He served her with a 10 Day Notice on October 04, 2019. The 10 Day Notice had an effective date of October 30, 2019. The Tenant did not dispute the 10 Day Notice. He attended the rental unit October 06, 2019 and it was unlocked and the keys were inside. He received a text message from the Tenant October 06, 2019 saying she had vacated. He did not try to re-rent the unit until after October.

The Tenant testified that she had to leave the rental unit because of a lung emergency. The Tenant acknowledged she did not provide the Landlord notice in accordance with section 45(3) of the *Residential Tenancy Act* (the “Act”). She agreed with the Landlord’s outline of events. She testified that the Landlord told her she did not have to give a full months notice to end the tenancy.

The Landlord denied he told the Tenant she did not have to give a full months notice to end the tenancy.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure (the “Rules”), 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 the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Security Deposit

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 testimony of the parties, I am satisfied that no move-in or move-out inspections were done and that the Tenant was not provided two opportunities to do these. I find the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for unpaid rent.

In relation to a forwarding address, the Tenant submitted a copy of the text message. The Landlord told the Tenant he could drop a bike off and she replied that this sounded good and provided a number and a name.

The Tenant was required to provide the Landlord a forwarding address if she sought return of the security deposit. A forwarding address should not be provided by text message although I may have accepted this if a proper address was provided. However, here the Tenant did not state that the number and name was her forwarding address. Further, the "address" is not an address as it does not include a city or postal code. I acknowledge that the Landlord figured the "address" out; however, it is not the Landlord's responsibility to do this.

I acknowledge that the Tenant's address was on the Tenant's Application; however, this is not sufficient. A forwarding address must be provided separately from an Application for Dispute Resolution.

I am not satisfied the Tenant provided a proper forwarding address to the Landlord. I am not satisfied section 38(1) of the *Act* was triggered when the Landlord applied to keep the security deposit. I find the Landlord complied with section 38(1) of the *Act*. I am not satisfied the Tenant is entitled to return of double the security deposit.

Compensation

Section 7 of the *Act* states:

7 (1) 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.

(2) 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.

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.

Tenant's Application

Section 32 of the *Act* states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenant testified about renovations in the rental unit causing dust. She also testified about mold in the rental unit. The Tenant testified that she suffered lung damage due to these issues.

The Landlord submitted evidence stating the restoration company took additional precautions to control dust. The Landlord denied there was mold in the rental unit.

I am not satisfied the renovations caused excessive dust. The Tenant did not submit documentary evidence to support this position such as photos of the rental unit showing dust.

I am not satisfied there was mold in the rental unit. The photos submitted by the Tenant do not show mold. They appear to show a hole in the ceiling with plastic over it. I do not see mold in the photos. Further, it is not possible to tell from photos whether mold is the type of mold that would affect a person's health. Therefore, in a claim such as this, the expectation is that the Tenant would provide an assessment or report from someone qualified to assess whether there was mold in the rental unit and the type of mold. The Tenant has not submitted such evidence.

I am not satisfied the Tenant suffered lung damage from dust or mold in the rental unit. I would expect the Tenant to have submitted some medical evidence showing that she has lung damage and that the lung damage was caused by dust or mold from her time in the rental unit. The Tenant has not submitted such evidence.

In the circumstances, I am not satisfied the Landlord breached the *Act*. Nor am I satisfied the Tenant suffered loss or damage from the alleged breach. The Tenant is not entitled to compensation.

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

Landlord's Application

Section 26(1) of the *Act* states:

26 (1) 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.

I did not understand the Tenant to dispute that she owed the Landlord \$1,127.00 in rent by the first day of October under the tenancy agreement. Nor did I understand the Tenant to dispute that she failed to pay October rent.

I accept that the Tenant vacated the rental unit October 06, 2019 as the parties agreed on this.

This was a month-to-month tenancy. The Tenant was only permitted to end the tenancy in accordance with section 45 of the *Act* which states:

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...

(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.

The Tenant was not permitted to end the tenancy for a lung issue without complying with section 45(3) of the *Act*. The Tenant acknowledged she did not comply with section 45(3) of the *Act*.

I do not accept that the Landlord told the Tenant she did not have to give a full months notice to end the tenancy. The Landlord denied this. I would expect such an agreement to be in writing given the importance of providing proper notice to end a tenancy. In the absence of further evidence to support that there was such an agreement, I do not accept that there was.

I acknowledge that the Landlord issued the Tenant a 10 Day Notice; however, I do not find that this ended the tenancy October 06, 2019 as the Landlord testified that the effective date was October 30, 2019 and the Tenant did not dispute this.

I am satisfied the Tenant breached section 45 of the *Act* by vacating the rental unit without proper notice. I am satisfied the Landlord lost October rent due to this breach. I am satisfied October rent was \$1,127.00 based on the Landlord's testimony which the Tenant did not dispute. I am not satisfied the Landlord was required to try to re-rent the unit for October once he realised the Tenant had vacated October 06, 2019 given the date in the month, that the Tenant did not give proper notice and, even assuming the Tenant had given proper notice October 06, 2019, such notice would only be effective November 30, 2019. I am satisfied the Landlord is entitled to recover October rent.

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

In total, the Landlord is entitled to \$1,227.00. The Landlord can keep the \$550.00 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 \$677.00.

Conclusion

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

The Landlord is entitled to \$1,227.00. The Landlord can keep the \$550.00 security deposit. The Landlord is issued a monetary order for the remaining \$677.00. This order must be served on the Tenant as soon as possible. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 08, 2020

Residential Tenancy Branch