



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, FFL
 MNSD

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on January 9, 2020. The Landlord applied for a monetary order for compensation for damage caused by the Tenant, a monetary order for unpaid rent, permission to retain the security deposit and to recover their filing fee.

The Tenant’s Application for Dispute Resolution was made on January 6, 2020. The Tenant applied for a monetary order for the return of their security deposit.

Two Property Managers, a Board Member (the “Landlord”) and the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of their claim?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of their security deposit?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties testified that the tenancy began on September 1, 2011, as a month to month tenancy. Rent in the amount of \$490.00 was to be paid by the first day of each month and at the Tenant had paid a \$187.50 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties testified that the Tenant gave notice to end their tenancy to the Landlord dated November 8, 2019, with an effective date of November 30, 2019. Both parties submitted a copy of the Tenant's notice to end tenancy into documentary evidence.

The Landlord testified that the Tenant gave their forwarding address to the Landlord by Canada Post sent on November 18, 2019. Both parties submitted a copy of the Tenants letter containing their forwarding address into documentary evidence. The Landlord submitted a copy of the Tenants date stamped mailing envelop containing their forwarding address into documentary evidence.

The Tenant and the Landlord testified that the move-out inspection had been completed on November 30, 2019, with the tenant and two representatives for the Landlord in attendance. The Landlord submitted a copy move-in/move-out inspection report into documentary evidence.

The Landlord testified that the Tenant had returned the rental unit to them uncleaned and damaged at the end of tenancy. The Landlord testified that the rental unit required 22.5-hour worth of cleaning at the end of tenancy, that there were 190 nail holes that

required filling and painting, that the thermostat had been removed, and that the rental unit need to be treated for bedbugs after the tenant moved out.

The Landlord provided a witness (the Board member) to these proceedings who had conducted the move-out inspection with the Tenant. The witness testified that the Tenant had been intimidating towards them and the other representative for the Landlord during the move-out inspection and that they had intentionally not recorded the true condition of the rental unit on the inspection report in order to prevent the Tenant from getting upset during the inspection. The witness testified that the rental unit had been returned to the Landlord in an unclean and damaged state. The Landlord submitted a written statement from this witness into documentary evidence.

The Tenant testified that the inspection report is accurate and that they had returned the rental unit to the Landlord fully cleaned and undamaged, with just normal wear and tear.

The Landlord testified that due to the Tenant's short notice and the unclean and damaged condition that the rental unit had been returned in, that they were unable to get the rental unit ready for the next renter until January 1, 2020. The Landlord is requesting \$490.00 in lost rental income for the month of December 2019.

The Landlord confirmed that they had a new renter ready to move in for December first but that they could not allow it, as there were so much cleaning and repairs that were required before the new rent could take over the rental unit.

The Tenant testified that there was no reason the new renter, the Landlord had waiting for a unit, could not have moved in for December 1, 2019.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Tenant served the Landlord with written notice to end their tenancy on November 8, 2019, by placing the notice in the Landlord mail drop box. I also accept the Tenant's testimony that they moved out of the rental unit, in accordance with their written notice, on November 30, 2019.

Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

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

In this case, I find that the Landlord received the Tenant notice to end the tenancy on November 11, 2019, three days after it was left in the Landlord's mail drop box. Based on when the Landlord received the Tenant's notice, I find that this tenancy could not have ended, in accordance with the *Act*, before December 31, 2019.

The Landlord is requesting \$490.00 in lost rental income for the month of December 2019, due to the Tenant's short notice to end the tenancy. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

I find that the Tenant was in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. I accept that the Landlord's testimony that they suffered a loss of rental income for December 2019 due to the short notice and that they have proven the value of that loss. However, before I am able to make an award of compensation, I must also determine if the Landlord has acted reasonably to minimize that loss. In this case, the Landlord testified that they had a new renter waiting to take over this rental unit but that they could not let them move in until January 1, 2020, due to the unclean and damaged condition state that the rental unit had been in at the end of this tenancy.

During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the condition of the rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

An Arbitrator looks to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and seen as a reliable account of the condition of the rental unit.

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

(2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(3) *The landlord must complete a condition inspection report in accordance with the regulations.*

(4) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

I have reviewed the inspection report, submitted into evidence by the Landlord, and I find that the inspection report had been completed in accordance with the *Act* as the

inspection had been conducted in the presence of the Tenant and two representatives for the Landlord, and completed on November 30, 2019, the last day of this tenancy. However, I note that none of the required cleaning or damage to the rental unit that the Landlord testified to during these proceedings, had been recorded on the inspection report.

I acknowledge that the Landlord's witnesses testimony, one of their representatives who had conducted the move-out inspection, stating that they had felt intimidated by the Tenant during the move out inspection and that they had intentionally not recorded the true state of the rental unit, on the inspection report, in order to keep the peace during the inspection. Where I can recognize that the move-out inspection can be a stressful time during any tenancy, and can often lead to dispute, I find that the presence of a disagreement between these parties, during the inspection, to be insufficient justification for making false statements on this legal document.

I have reviewed the witness testimony and their written statement submitted to these proceedings, and I find that the explanation offered by this witness as to why the inspection report does not reflect the Landlord claims and should not be considered in my decision, to be unreliable.

The two parties that attended the rental unit on November 30, 2019, were the legal agents representing the Landlord during the move-out inspection, and that the document, the inspection report, that they created and signed with the Tenant, on that day, is a legally binding account of the condition of the rental unit at the end of this tenancy. It is during the inspection that both parties are provided with the opportunity to make legal statements regarding the condition of the rental property at the beginning and end of a tenancy. These proceedings are not an opportunity for one party to that document to retract or rescind what they willingly recorded on a legal document at that time.

It is the legal responsibility of the Landlord to ensure that they or their assigned agent are prepared to conduct a professional and accurate move-in or move-out inspection. I find that there is a requirement, on both parties, to ensure that the inspection report accurately records any deficiency in the rental unit during the inspection and that those deficiencies are clearly communicated to the other party during the inspection. I find the action of willing recording that the rental unit was returned in good condition at the time of inspection and then backtracking, over a month later, claiming for \$2,506.13 in compensation for cleaning and repairs that ought to have been easily noticeable as deficient, and communicated as such, during the inspection, to be reprehensible action.

Overall, I find that the witness's testimony and the witness's written statement submitted to these proceedings to be unreliable and will not be considered in my decision.

I must also speak to the photographic evidence submitted by the Landlord into documentary evidence. During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the validity of this photographic evidence. I have reviewed the 12 pictures submitted into evidence, and I noted that they do not include a date and time stamp or any distinguishing features that would prove in which rental unit they were taken or when they were taken. Consequently, I find that due to the questionable validity of these pictures, I will not consider this photographic evidence in my final decision.

I accept the inspection report to be the creditable account of the condition of the rental unit at the end of this tenancy. Consequently, as the inspection report makes no mention the need for additional cleaning or repairs, I find that the Landlord did not act reasonably to minimize their loss when they refused to allow the new renter to move into the rental unit for December 2019.

I find that the Landlord was in breach of section 7 of the *Act* when they did not act reasonably to minimize their damage or loss in this case. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of December 2019.

As for the Landlord's remain claims for \$1,664.92 in compensation; consisting of \$130.00 for the 1st cleaning, \$124.92 in electrical repairs, \$320.00 for the 2nd cleaning, \$440.00 to fill nail holes and paint, and \$650.00 to treat bedbugs.

Throughout these proceedings, the parties to this dispute provided conflicting verbal testimony regarding the need for additional cleaning, electrical repairs, filling nail holes and painting and the treatment of bedbugs in the rental unit at the end of this tenancy. As I mentioned earlier, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have already determined the inspection report to be the creditable account of the condition of this rental unit at the end of this tenancy, and that there is no record of the Tenant returning the rental unit unclean and damaged on that report. As the burden is

on the Landlord to establish their claim, I find that there is insufficient evidence before me to show that the Tenant had caused any of the damage the Landlord is claiming for in these proceedings. Consequently, I dismiss the remaining items listed in the Landlords' claim in their entirety.

As for the security deposit (the "deposit") for this tenancy; section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) *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.

I accept the documentary evidence, submitted by the Landlord, that the Tenant mailed a letter, on December 18, 2019, which provided their forwarding address to the Landlord. Pursuant to section 90 of the *Act*, I find that the Landlord was deemed to have received the letter, five days after it was mailed, on December 23, 2019. Accordingly, the Landlord had until January 7, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an application for Dispute Resolution to claim against the deposit. The Landlords, in this case, filed their claim against the deposit on January 6, 2020, within the statutory timeline.

As the Landlord has been unsuccessful in their claim against the Tenant, I find that pursuant to section 38 of the *Act*, the Tenant is entitled to the return of their security deposits in the amount of \$187.50.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their

claim, I find that they are not entitled to the recovery of their filing fee. Therefore, I dismiss the Landlord's claim for the recovery of their filing fee.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I grant the Tenant a **Monetary Order** in the amount of **\$187.50**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: April 28, 2020

Residential Tenancy Branch