



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "Act"), for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Property Manager (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Both parties confirmed that they had received each other's documentary evidence packages.

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 a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit?
- Is the Landlord entitled to retain the security deposit and pet damage deposit for this tenancy?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant agreed that this tenancy started on April 1, 2019 as a one-year fixed term tenancy. That rent in the amount of \$1,850.00 was to be paid by the first day of each month and that the Tenant had paid a \$925.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that this tenancy ended on November 18, 2019, when the Tenant's roommate, the last occupant of the rental unit moved-out in accordance with a 10-Day Notice to End Tenancy for Unpaid Rent.

The Tenant testified that they moved out of the rental unit on May 15, 2019, and that the Landlord and the Tenant's old roommate entered into a new verbal tenancy agreement as of June 10, 2019.

The Tenant testified that they gave the Landlord written notice to end their tenancy during a meeting between themselves, their old roommate (the "third party") and the Landlord, that took place on June 10, 2019. The Tenant testified that the Landlord and the third party had been in negotiates as of May 10, 2019, for the third party to take over the tenancy, and that the June 10, 2019, meeting was to finalize that agreement.

The Tenant also testified that the third party paid the rent for the rental unit for the period of July 2019, in cash, and that the Landlord had accepted that cash payment of rent.

The Landlord testified that they had unknowingly accepted rent from the third party in July 2019, but that they had issued a receipt for use and occupancy. The Landlord also testified that they had understood that the Tenant wished to end their tenancy as of their 10, 2019, meeting.

Analysis

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

In this case, I find that the Landlord and the Tenant have provided opposing oral testimony as to the end date of this tenancy agreement and the existence of a new verbal tenancy between the Landlord and a third party. When two parties to a dispute

provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the applicant's in this case is the Landlord, I find that the Landlord holds the burden of proof to provide sufficient evidence to establish their claim.

I accept the testimony of the Landlord that they knew the Tenant had moved out of the rental unit and that the Tenant was ending their tenancy early, effective as of their meeting date on June 10, 2019. I also accept the agreed upon testimony of these parties that for several weeks before the June 10, 2019 meeting, and during that meeting the Landlord had been in discussions with the roommate of the Tenant (the "third party") to start a new tenancy in the rental unit. Additionally, I accept the testimony of the Landlord that they accepted a cash payment for the July 2019, rent after they knew the Tenant had moved out, and after the June 10, 2019 meeting between the Tenant, the third party and themselves.

Overall, I find that this tenancy started on April 1, 2019, and ended early, as of June 10, 2019, the date the Landlord confirmed that they knew the Tenant had moved out of the rental unit and had wanted to end their tenancy. I also find that the Landlord entered into a new verbal tenancy agreement with the third party when they accepted the July 2019, rent payment from that third party, in exchange for continued possession of the rental unit by that third party.

I find that the exchange of rent for possession of the rental unit, in the amount of \$1,850.00, created a new verbal tenancy agreement between the Landlord and this third party, and that the new verbal tenancy ended all liability of this Tenant's tenancy.

As the entirety of the Landlord's claim is regarding losses that they incurred due to their tenancy with the third party, between July to December 2019, I find that I must dismiss the Landlord's claim against this Tenant as their requested losses did not happen during this tenancy.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

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

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: May 22, 2020

Residential Tenancy Branch