



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged receipt of the landlord's Notice of Dispute Resolution Proceedings and evidence, however the landlord did not receive the tenant's evidence. The tenant acknowledged she did not serve the landlord with any evidence however her package contained the same evidence the landlord submitted, namely the tenancy agreement, the condition inspection report and the mutual agreement to end tenancy. Based on this information, and due to the tenant's failure to exchange evidence as required by Rule 3 of the Residential Tenancy Branch Rules of Procedure, only the landlord's documentary evidence was referred to in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Should the filing fee be recovered?

Background and Evidence

The landlord provided the following testimony. The month to month tenancy began on November 16, 2019, although the tenancy agreement was signed on November 17th. A

copy of the tenancy agreement was provided as evidence. Rent in the amount of \$950.00 was payable on the 15th of each month. A security deposit of \$475.00 was collected and is still in the possession of the landlord. No condition inspection report was done at the commencement of the tenancy however one was conducted when the tenant moved out.

Within a couple of weeks of moving in, the tenant told the landlord that she would be ending the tenancy. The landlord does not recall when she was told, sometime in late November, however the landlord knew that the tenancy would end by December 14th. The landlord drafted a Mutual Agreement to End a Tenancy form (Form #RTB-8) and the tenant and landlord both signed it on December 14th. The tenancy ended at 3:00 p.m. that day. A copy of the agreement was entered as evidence by the landlord. The landlord testified that when getting the tenant to sign it, she told the tenant she is required to give the landlord one month's notice and pay her one month's rent.

When the tenant left, the dresser in the unit was damaged. Four nail holes were put in the walls by the tenant and not repaired. The carpets were dirty and so were the curtains. The landlord seeks \$200.00 as compensation for the damage. The landlord testified the damage was noted on the condition inspection report upon move-out, however acknowledges no condition inspection report was done at the commencement of the tenancy. No photographs of the damage was presented into evidence.

The landlord seeks compensation for the equivalent of one month's rent because the tenant ended the tenancy with less than one month's notice. The landlord testified the tenant advised her via email that she could retain her full security deposit in the amount of \$475.00. The landlord did not provide a copy of the email into evidence.

The tenant provided the following testimony. She was unhappy with the living situation from the beginning. The restrictions on cooking and laundry made her uncomfortable, prompting her to find another place to live. The tenant acknowledged she wanted the landlord to keep the security deposit as compensation for ending the tenancy without a month's notice. The tenant testified she gave the landlord notice she was leaving at the beginning of December, however she does not have the message anymore.

Regarding the dresser, whatever damage the dresser had was already there. The tenancy only lasted one month and any 'damage' sustained would be from normal wear and tear. There was no condition inspection report done at the beginning of the tenancy, only signed at the end of the tenancy.

Analysis

The landlord claims one month's rent for the tenant ending the tenancy with less than one month's notice.

Tenancies end pursuant to section 44 of the *Act*, reprinted below:

44 How a tenancy ends

(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- i. section 45 [*tenant's notice*];
- ii. (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- iii. section 46 [*landlord's notice: non-payment of rent*];
- iv. section 47 [*landlord's notice: cause*];
- v. section 48 [*landlord's notice: end of employment*];
- vi. section 49 [*landlord's notice: landlord's use of property*];
- vii. section 49.1 [*landlord's notice: tenant ceases to qualify*];
- viii. section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy; (emphasis added)

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement

A copy of the mutual agreement to end a tenancy was filed as evidence, drafted by the landlord. I find the tenancy ended in accordance with section 44(1)(c), when the landlord and tenant agreed in writing to end the tenancy. I note the proviso at the top of the form which reads:

This form is not a notice to end tenancy. Neither the landlord nor tenant are under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party.

If the tenant had given notice to the landlord, ending the tenancy in accordance with section 44(1)(a)(i), the landlord would be in a position to be compensated with a month's rent. However, the tenant did not give written notice to the landlord to end the

tenancy, and the Mutual Agreement to End Tenancy is not a notice to end tenancy. Therefore, the landlord is not entitled to be compensated to the tenancy ending. I dismiss this portion of the landlord's claim.

The landlord testified that the tenant agreed in writing that she could retain the security deposit. The tenant did not dispute this testimony and I find this testimony corroborated by the condition inspection report signed by the tenant that indicates she agrees to the damage to the rental unit as stated on the condition inspection report and that it fairly represents the condition of the rental unit. The condition inspection report shows the tenant agreed to a deduction of \$425.00 from her original \$475.00 security deposit. Section 62 of the *Act* allows the Director (arbitrator) to make any finding of fact or law that is necessary or incidental to making an order under this *Act*. Pursuant to section 62, I find that the tenant agreed in writing to allow the landlord to retain this portion of her security deposit.

As the landlord sought only \$200.00 for the damage to the rental unit alleged (dresser, dirty curtains, 4 nail holes in the wall) and I have determined the tenant agreed to allow the landlord to retain \$425.00 of her security deposit, I order that the landlord is entitled to retain \$425.00 of the tenant's security deposit as compensation for the damage done to the rental unit.

The landlord's application was successful. The \$425.00 compensation awarded to the landlord exceeds the original amount of compensation for damages to the rental unit claimed by the landlord. Therefore, the landlord is not entitled to recover the filing fee for the cost of this application.

Conclusion

The landlord is entitled to retain \$425.00 of the tenant's security deposit. The remaining \$50.00 of the tenant's security deposit is to be returned to the tenant.

I award the tenant a monetary order in the amount of \$50.00.

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 26, 2020