



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an application for dispute resolution (the “Application”) on March 24, 2020 seeking an order of possession for the tenant’s notice to end tenancy. On April 7, 2020 the landlords amended the Application to include compensation for monetary loss or other money owed. The landlords applied to use the security deposit towards compensation on the monetary claim. Additionally, the landlords seek to recover the filing fee for the Application.

In the hearing the landlords stated they served the notice of this dispute hearing and prepared evidence to the tenant via Canada Post registered mail sent on March 30, 2020. They provided additional evidence by registered mail on April 7, 2020. The tenant acknowledged receipt of these packages. The landlords also confirmed they received the tenant’s prepared evidence. For the purposes of this hearing, I find both parties are sufficiently served under section 71 of the *Act*.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on May 19, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

Preliminary Matter

The rental unit in question was occupied by two co-tenants, SF and ZN. ZN is the Respondent in this hearing.

On the application, the landlords briefly summarized the situation. The tenant SF ended the tenancy and moved out of the unit on March 5, 2020. This left the tenant ZN as the sole occupant in the unit. The landlords provided the reason given was that the tenant SF was subject to threatening and abusive behaviour by the tenant ZN. The record

shows this notice was in early March by direct communication with the landlords, and a confirmation by email on March 29, 2020.

This is confirmed by a written statement of the tenant SF that the landlords provided as evidence. The tenant SF stated: "I have vacated the property and given you email notice (March 31st 2020) that I have vacated the property as a safety precaution to my well-being."

At the time of the of the Application on March 24, the tenant ZN had not moved out of the unit. The landlords stated that ZN "intends to stop payment of rent with no intention to vacate." On March 30, the tenant ZN vacated abruptly, with about one hour notice in advance.

By the date of the hearing on May 22, 2020, the tenant ZN had already moved out of the rental unit. The unit is vacant with no tenants occupying. The landlords stated this was on March 30, 2020, and there was no contradictory evidence presented by the tenant ZN on this point. Based on this, I amend the landlords' application to withdraw the application for an order of possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Are the landlords entitled to retain the security deposit pursuant to section 38 of the *Act*?

Are the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords provided a copy of the tenancy agreement that both tenant SF and tenant ZN and the landlords signed on July 5, 2019. The tenancy began on July 15, 2019 for the fixed term to end on June 30, 2020. The rent amount was \$2,500.00 payable on the first of each month. There was a security deposit of \$1,250.00 that the tenants paid on July 5, 2020 and a pet damage deposit of \$200.00 paid on July 15, 2019.

The landlords submitted an amended application on April 7 to apply for a monetary order for \$1,377.07. One submitted copy of the amended application specifies a new monetary claim for \$1,377.07. A second submitted copy of the same form specifies a change to an existing claim amount for \$1,577.51 – this adds \$200.00 for cleaning expenses. Additionally, the landlords amended the amount claimed for registered mail fees for \$11.36.

The monetary claim includes \$1,250.00 for a portion of the April rent amount – this is one-half of the total amount of \$2,500.00. There is a bank account activity copy that shows the “ACCOUNT CLOSED” for the withdrawal of \$1,250.00 on April 3, 2020. The landlords wish to apply the security deposit toward this claim.

The landlords stated that they returned the \$200.00 pet damage deposit to the tenant SF who moved out of the unit before the tenant, on March 5. They are holding the \$1,250.00 security deposit. They feel it is not fair to the tenant SF to use the entirety of the security deposit amount to cover this ZN tenant’s rent amount for April.

The tenant SF moved out of the unit on March 5, 2020. By email on March 29, 2020, the tenant SF sent an email to the landlords that states: “This email is to confirm that I am ending the tenancy of the unit. . . .as of today, March 29, 2020. I have already moved out of the unit.”

Tenant ZN verifies that they moved out of the unit on March 31, 2020. They feel this was at the landlords’ behest, forcing them out because of the immediate concerns around emergency social distancing measures. They acknowledged April rent was not paid. They stated the account was closed because there were no funds in the account, and they did not want to incur overdraft. They propose using the security deposit amount – their understanding is that this is what a deposit provides for. They also added that they and the tenant SF are both “liable for each other” when it comes to the dispensation of the security deposit after the tenancy.

The tenant ZN also supplied evidence that shows an agreement was in place between them and the landlords for their move out at the end of April 2020. These are email messages between them at the landlords in which it is stated: “You will vacate premises by April 30” (on March 11), and “You/[tenant SF] have provided notice to end tenancy. We are expecting you to vacate by April 30” (on March 23).

Analysis

I accept the landlords’ submission that they had an agreement with the tenant ZN to remain in the unit until the end of April. The messaging on March 11 and March 23 is

evidence of their confirming this with the tenant ZN who was remaining in the unit after the tenant SF had vacated. I find both parties agreed to this.

Further, the tenant SF advised that the tenancy was ending on March 29, 2020. The *Act* section 45(2) specifies that a tenant may end the fixed tenancy effective on a date that "is not earlier than the date specified in the tenancy agreement as the end of the tenancy." The messaging from tenant SF is inadequate and inaccurate with respect to a tenant giving an effective end date of the tenancy. However, I find the tenant ZN and the landlords had an agreement in place for them to remain in the unit until the end of April 2020.

I accept that the parties agreed that the full amount of rent for the month of April 2020 was not paid.

I find the tenant ZN verified the amount owing, and tacitly agreed on the use of the security deposit as recompense for this amount. On this basis, I find the landlords are entitled to an award for the amount claimed: \$1,250.00.

The landlords raised their concern about the tenant SF bearing one-half the security deposit amount for these purposes. I do not factor this in to the awarded amount, and I find there is no agreement in place that allows for the return of any of this portion to the tenant SF who had previously vacated. As provided for in the Residential Tenancy Policy Guideline 13 – that which gives a statement of the policy intent of the *Act* – co-tenants are jointly and severally responsible for meeting a tenancy agreement's terms. Thus stated, the tenant ZN and tenant SF are jointly and severally liable for debts related to the tenancy. In this case, that is the one-half month's rent here claimed by the landlords.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlords. The landlords have established a claim of \$1,250.00. After setting off the security deposit, this leaves no balance remaining. I am authorizing the landlords to keep the security deposit amount as compensation for the April 2020 rent portion they have claimed.

The *Act* section 37 states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

On April 7, 2020, the landlords amended their application to include a monetary claim for cleaning. This \$200.00 amount is stated to be for 5 hours at \$40.00 per hour. The landlords did not provide verification of this amount through photos of the condition, and there is no statement on the condition of the unit in place under what would normally be the process of condition inspection meetings. There is no evidence in place to establish whether the tenant ZN did not leave the unit reasonably clean as provided for in section

37 of the *Act*. I find there is no evidence to substantiate this claim, and I dismiss this portion of the landlords' claim.

The *Act* does not provide for recovery of other costs associated with making an application or serving evidence. As such, I make no award for the registered mail costs claimed by the landlords.

As the landlords are at least partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application. This is an application of section 72(1) of the *Act*.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this hearing application.

The landlords are provided with this Order in the above terms and the tenant ZN must be served with **this Order** as soon as possible. Should the tenant ZN 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: June 4, 2020

Residential Tenancy Branch