



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 2, 2020, by the Landlords under the Residential Tenancy Act, (the “Act”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and pet damage deposit (the “deposits”) and an order to recover the cost of filing the application. The matter was set for a conference call.

Both Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony.

Both parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing. The Tennent testified that they had received the Landlords’ documentary evidence that I have before me and confirmed that they had not submitted any documentary evidence to this proceeding.

I have reviewed all oral and written evidence 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

- Are the Landlords entitled to a monetary order for rent?
- Are the Landlords entitled to retain the deposits?
- Are the Landlords entitled to the return for their filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on 22 August 2019, as a one-year and seven-day fixed term tenancy, which rolled into a month to month tenancy at the end of the fixed term. Rent in the amount of \$2,350.00 was to be paid by the first day of each month, and the Landlords had been given a \$1,175.00 security deposit and a \$1,175.00 pet damage deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the tenancy ended on June 5, 2020, the date the Tenant moved out of the rental unit. The parties also agreed that they had signed a mutual agreement to end the tenancy, as of June 16, 2020.

The Landlords testified that the Tenant had amended the mutual agreement after they had signed it, changing the end of tenancy date to June 6, 2020. The Landlord testified that they did not agree to the change on the end date of tenancy. The Landlords submitted a copy of two mutual agreements, the original they signed, and the amended one the Tenant signed into documentary evidence.

The Tenant testified that they had amended the mutual agreement to end tenancy after the Landlords had signed the document, changing the end of tenancy date to June 6, 2020. The Tenant testified that they had made a mistake on the desired date to end the tenancy, in their initial request to the Landlord and that they had amended the document to reflect the date they wished the tenancy to end. The Tenant confirmed that they did not have permission from the Landlord to change the date.

The parties agreed that no rent had been paid for June 2020 for this tenancy.

The Landlords are seeking permission to retain the deposits for this tenancy, as payment for the June 2020 rent.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 44(1c) of the *Act* states that a landlord and tenant may agree to end a tenancy agreement on a date earlier than contracted to in their tenancy agreement.

How a tenancy ends

44 (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];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) 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;

(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.

In this case, I accept the agreed-upon testimony, supported by the documentary evidence, that these parties agreed in writing to end this tenancy as of June 16, 2020. I have reviewed the mutual agreement to end this tenancy, and I find that the Tenant did amend this document after the Landlords had signed, and I find that there is no evidence before me to show that the Landlords had agreed to this amendment.

Pursuant to section 44 of the *Act*, I find that this tenancy ended in accordance with the *Act* on June 16, 2020, as per the signed mutual agreement to end tenancy between these parties.

I also accept the agreed-upon testimony of these parties that the Tenant did not pay the rent from June 1, 2020, to June 16, 2020, for this tenancy. Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

I find that the Tenant breached section 26 of the *Act* when they did not pay the June 2020 rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,236.16, consisting of the per diem rent due for the period between June 1, 2020, to June 16, 2020. The Landlords are granted permission to retain \$1,236.16 from the deposits they are holding for this tenancy in full satisfaction of this award.

Monthly Rent	\$2,350.00
Yearly Rent	\$28,200.00
Per Diem	\$77.26
Days Refunded	16
Awarded to Tenant	\$1,236.16

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in this

application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application.

I order the Landlords to return the remaining \$1,013.84 of the Tenant's deposits for this tenancy, to the Tenant within 15 days of the date of this decision.

	<u>Due</u>
June 1-16, 2020 Rent	\$1,236.16
Filing fee	\$100.00
	<hr/>
	\$1,336.16
Security Deposit Held	\$1,175.00
	<hr/>
	\$161.16
Pet Damage Deposit Held	\$1,175.00
Due to the Tenant	<hr/>-\$1,013.84

If the Landlords fail to return the remaining amount of the deposits for this tenancy to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their deposits for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their deposits is required.

Conclusion

I order the Landlords to return the remaining \$1,013.84 of the Tenant's security and pet damage deposits to the Tenant within 15 days of the date of this decision.

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 25, 2020

Residential Tenancy Branch