



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to an application made January 24, 2020 and an amended application made May 22, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) by registered mail on January 29, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on February 5, 2020. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain all or part of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on September 1, 2019 for a fixed term to end August 31, 2020. The Tenants moved out of the unit on January 12, 2020 after having been given a 10-day notice to end tenancy for unpaid January 2020 rent. During the tenancy rent of \$2,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit and \$1,200.00 as a pet deposit. In a previous decision dated January 14, 2020, the Landlord obtained an order of possession and a monetary order for January 2020 rent. This previous decision notes that the notice to end tenancy was not disputed by the Tenants and they were deemed to have accepted the Landlord's end of the fixed term tenancy. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenants.

The Landlord claims lost rental income due to the Tenants ending the tenancy before the fixed term end date. The Landlord states that the unit was advertised online on January 12 and 23, 2020 for rent of \$2,400.00. A new tenancy was obtained for a start date of March 1, 2020 with rent of \$2,200.00 payable until and including August 2020. The Landlord claims the lost rental income of \$2,400 for February 2020 and \$1,200.00 for lost rental income between March and August 2020 rent. The tenancy agreement contains a liquidated damages clause requiring the payment of \$500.00 on certain conditions as set out under the Analysis below. The Landlord claims \$500.00 as liquidated damages. The Landlord does not know how the liquidated damages clause operates and makes no arguments on this point.

The tenancy agreement requires the Tenants to pay 75% of the hydro and gas utilities. The Tenants did not pay the utilities accumulated to January 12, 2020 and the Landlord claims \$321.70. The Landlord provides a copy of the hydro bill.

The Tenants left the sunroom carpet damaged by wine. The carpet was 8 years old. The Landlord replaced the carpet and claims the replacement cost of \$539.00.

The Tenants left the unit unclean and the Landlord claims \$105.00 as the cleaning costs and \$27.92 for the cost of cleaning supplies.

The tenancy agreement requires the Tenants to maintain the lawn portion at the front of the unit and the Tenants failed to leave the lawn maintained at the end of the tenancy. The Landlord claims \$40.00 for lawn maintenance and \$60.00 for the removal of items left behind by the Tenants.

The Landlord in error included a double claim of \$100.00 for the grass cutting and removal of items identified as item #9 within its monetary order worksheet.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenancy agreement requires the Tenants to pay 75% of the utilities. Based on the undisputed evidence from the Landlord of unpaid utilities and unclean or unmaintained unit and yard and given the invoices, bills and receipts for costs I find that the Landlord has substantiated an entitlement to **\$321.70** for utilities, **\$105.00** for cleaning, **\$27.92** for cleaning supplies, **\$40.00** for lawn maintenance; and **\$60.00** for the removal of items left behind.

Policy Guideline #40 provides that the useful life of a carpet is 10 years old. Based on the Landlord's evidence of the age of the carpet I find that at the end of the tenancy the

carpet only had a useful life of 2 years and that the Landlord is entitled to compensation for the loss of this life. Based on the Landlord's undisputed evidence that the carpet was left damaged by the Tenants and the undisputed cost of the replacement carpet I find that the Landlord has substantiated an entitlement to 2/10 of the replacement cost of \$539.00 calculated to be **\$107.80** ($539/10 \times 2$).

Given the Landlord's evidence of an error in including a double claim for \$100.00, I dismiss this claim.

Section 7 of the Act provides as follows:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The relevant portion of Paragraph 6 of the tenancy agreement with the title "Liquidated Damages" is as follows:

" . . . if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated."

Section 5(2) of the Act provides that any attempt to avoid or contract out of this Act or the regulations is of no effect.

The liquidated damages clause for all costs associated with re-renting the unit is triggered by the breach of the fixed term. This clause does not appear to limit the

damages to rental revenue losses caused by the breach. However, section 7 of the Act requires the Landlord to take reasonable steps to mitigate its losses. This would include attempts to re-rent the unit for the remaining fixed term. As making the Tenants responsible for the costs of the Landlord's requirement to take mitigation efforts would be contrary to the Act, I find that the liquidated damages clause is of no effect.

Given the Landlord's undisputed evidence of the Tenants' breach of the fixed term and of the Landlord's advertising of the unit I find that the Landlord has substantiated that the Tenant caused lost rental income and that the Landlord has taken reasonable steps to mitigate its undisputed rental income losses. I find therefore that the Landlord is entitled to lost rental income of **\$2,400.00** for February 2020 and **\$1,200.00** for the period March to August 2020.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total monetary entitlement of **\$4,362.42**. Deducting the combined security and pet deposit plus zero interest of **\$2,400.00** leaves **\$1,962.42** owed by the Tenants.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$2,400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining \$1,962.42. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 2, 2020

Residential Tenancy Branch