



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to an application by the Landlords pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damage to the unit - 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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirm that their email addresses as set out in the Landlord's application are correct.

Preliminary Matter

Landlord XT did not attend the hearing. Landlord AW states that Landlord XT is the owner of the unit who contracted with Landlord AW to carry out the Landlord obligations during the tenancy. Landlord AW states that it was acting on behalf of the owner for the tenancy under a management agreement until that agreement was terminated by Landlord XT on April 6, 2020.

Section 1 of the Act defines "landlord", in relation to a rental unit, as including the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers

and performs duties under this Act, the tenancy agreement or a service agreement. Based on the undisputed evidence that Landlord XT is the owner of the unit I find that this person is properly named as a landlord in this application.

Issue(s) to be Decided

Are the Landlord's entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on February 1, 2020 to end on February 1, 2021. The Tenants moved out of the unit on April 5, 2020. During the tenancy rent of \$4,500.00 was payable on the first day of each month. The security and pet deposits have been dealt with in a previous decision dated May 19, 2020 (the "Previous Decision").

Landlord AW (hereinafter the "Landlord") states that the management fee charged to the Landlord is now being claimed against the Tenants as the Tenants ended the tenancy causing Landlord XT to end the management agreement with the Landlord. The Landlord cannot point to any term of the tenancy agreement that requires the Tenants to pay a management fee beyond the reference to "manager's costs to re-rent the property" as contained in the liquidated damages fee. The Landlord claims \$2,835.00.

The Landlord states that no rents were paid for April 2020 and the Landlord claims unpaid rent for the period April 1 to 5, 2020. The Landlord claims lost rental income for the period April 6, 2020 to May 31, 2020. The Landlord claims a total of \$9,000.00. the Landlord states that at the time of move-out the Tenants were told that if new tenants were found the Tenants would not have to pay any further rent.

The Tenants state that when they informed the Landlord that one of the Tenant's employment ended due to the state of emergency and that they could not pay the rent

for the unit, the Landlord informed that they could move out of the unit without penalty and would only pay rent for the 4 days the unit was occupied by the Tenants in April 2020. The Tenants state that this amount was agreed to be deducted from the security and pet deposits being held by the Landlord at the time and that in the Previous Decision this amount was deducted from the security and pet deposit that was ordered returned to the Tenants. The Tenants state that the unit was listed for sale online on April 1, 2020 and that no renters were sought for the unit at all. The Landlord states that it is not sure when the unit was listed for sale and has no evidence of anything done by Landlord XT after April 6, 2020. The Tenants state that they had asked the Landlord for extra time to move out of the unit however the Landlord disagreed as the unit was being shown on April 5, 2020 to a family that was interested in buying the property.

The Landlord claims the liquidated damages of \$2,362.50 as provided for under the tenancy agreement. The Landlord states that the Tenants were not informed at any time that the tenancy agreement would be treated as ongoing despite the Tenants moving out before the fixed end date. The Landlord states that the Tenants have not paid the liquidated damages amount.

The Tenants state that at the time of signing the tenancy agreement the Landlord did not point out a liquidated damages term and that they only place their initials beside the terms that the Landlord did point out. The Tenants state that the Landlord did not discuss a liquidated damages term with them at signing. The Tenants state that when they informed the Landlord rent could not be paid the Landlord agreed to reduce the rent and that it would draft a new tenancy agreement without any fees or penalties however this did not occur. The Tenants state that at move-out the Landlord agreed that the Tenants only had to pay the daily rent for April 2020 until they moved out. The Tenants state that the Landlord then told them that it was no longer acting as agent for Landlord XT.

The Landlord states that the Tenants left the carpet dirty but not that bad. The Landlord claims \$1,050.00 as carpet cleaning costs because the Landlord was told by Landlord XT that animal hairs were present on the carpets, so they required deep cleaning. The Landlord provides no invoice for this cost. The Tenants state that the carpets were vacuumed at the end of the tenancy and were not left unclean.

The Landlord states that the Tenants left blinds damaged and claims \$210.00. No invoice was provided for these costs. The Landlord states that it has no idea what was spent on the repairs. The Landlord states that the Tenants left a hole in a wall and claims \$107.00 as the cost of the drywall repair. The Landlord states that it is not sure what Landlord XT spent on the repairs. No invoice was provided for this cost.

The Tenants state that at move-out no damages to the unit was noted other than the one hole and that the Landlord agreed that \$100.00 was sufficient for the cost of this repair. The Tenants state that this amount was agreed to be deducted from the security and pet deposit and that this amount was deducted as agreed in the Previous Decision. The Landlord provides a copy of the move-out report.

Analysis

Section 26(1) of the Act provides that 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. Section 77(3) of the Act provides that except as otherwise provided in this Part, a decision or an order of the director under this Part is final and binding on the parties. Given the undisputed evidence that the Previous Decision made a deduction for the rent payable for the four days in April 2020 that the unit was occupied by the Tenants and as this is a final and binding decision, I find that this matter has been dealt with. I dismiss the claim for unpaid rent.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the lack of evidence that the Tenants are required by the tenancy agreement or Act to pay the management fee I find that the Landlord has not substantiated an entitlement to this claim, and I dismiss it.

Given the undisputed evidence that the Previous Decision already compensated the Landlord for the damage to the wall I find that this compensation amount is final, and binding and I dismiss the claim for damage to the wall.

As the tenancy was brief, as the Landlord gave evidence that the carpets were not that bad and given the Tenant's evidence of having vacuumed the carpet, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants failed to leave the carpet reasonably clean. Further the Landlord has not provided any evidence of any cleaning costs incurred. For these reasons I dismiss the claim for carpet cleaning costs.

As the Landlord provided no invoice to support the repair costs claimed for the blinds and as the Landlord has no other evidence of the costs of repairs, I find that the Landlord has not substantiated the costs claimed for blind repairs and I dismiss this claim.

The liquidated damages clause in the tenancy agreement sets out as follows:

If the tenant ends the fixed term Tenancy Agreement before the original term as set out in the Tenancy Agreement, the Manager may treat the Agreement as an end. In such event an equivalent of one half (1/2) month's rent will be paid by the

Tenant to the Manager as liquidated damages, and not as a penalty, to cover the Manager's cost of re-renting the Property. The liquidated damage must be paid in addition to any other amounts owed by the tenancy, such as unpaid rent or damage to the Property.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. In this instance although the liquidated damages clause uses the costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the amount becomes payable upon the Tenants ending the tenancy before the original term. This amount limits or determines in advance the damages flowing from the early end of the tenancy.

The landlord has claimed loss of rental income for April 6, 2020 to May 31, 2020 as well as liquidated damages of a half month's rent. However, the liquidated damages clause provides that the landlord may treat the Agreement as an end, in which case, the landlord claims the liquidated damages. This term therefore provides the Landlord with two options: claim the liquidated damages amount thereby ending the contract or treat the contract as continuing, in which case the rent obligations under the contract would continue. The requirement to pay the liquidated damages amount in addition to other amounts such as unpaid rent or for damage to the property is a requirement to pay damages that do not flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damage amount. As the Landlord has made a conflicting claim for both liquidated damages and lost rental income, I resolve the conflict in favour of the Tenant and dismiss the claim for lost rental income.

The Landlord's evidence is that it ceased to act for the owner at the end of the tenancy. The undisputed evidence is that the unit was not thereafter rented and was placed for sale. Given this evidence I find on a balance of probabilities that there were no costs for re-renting the property. As such I find that the liquidated damages amount is a penalty and not enforceable. I dismiss the claim for liquidated damages.

As none of the Landlord's claims have been successful, I dismiss the claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

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