



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order to recover unpaid rent, for compensation for damages, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

One of the Landlords (the “Landlord”) and both Tenants (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 is described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on November 15, 2019, as a one-year fixed term tenancy. Rent in the amount of \$2,500.00 was to be paid by the 15th day of each month, and the Landlord had been given a \$1,250.00 security deposit at the outset of the tenancy. The Landlords submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that this tenancy ended on February 14, 2020, when the Tenants moved out of the rental unit, and that the Tenants did not attend the move-out inspection for this tenancy. The Landlord submitted a copy of the move-in/move-out inspection report and a copy of their written attempt to schedule the move-out inspection into documentary evidence.

The Landlords testified that they received the Tenants' notice to end their tenancy on February 1, 2020, providing only 14 days notice to the Landlord. The Landlord testified that they believe that due to the short notice to end this tenancy, they are entitled to an additional month's rent in the amount of \$2,500.00 for the period between February 15, 2020, to March 14, 2020.

The Landlord initially testified that they did not attempt to re-rent the rental unit as this tenancy had proven to be so emotional for them, and that they had decided to not rent out the rental unit again. During the hearing, the Landlord was advised that the *Act* required a landlord to make reasonable attempts to secure a new renter for the rental unit, in order to qualify for compensation.

The Landlord then testified that they had looked online a couple of times but that they did see anyone they liked and had decided after speaking with their family that they were no longer going to rent out the unit. This Arbitrator inquired as to why the Landlord had changed their testimony; the Landlord testified that they had not changed their testimony but that they had initially stated that they made no attempt to re-rent the rental unit, earlier, for ease of testimony.

The Tenant testified that they agreed that they issued short notice to end their tenancy, but that it was due to no longer feeling comfortable living on the property with the Landlords.

The Landlords testified that they made two attempts to schedule the move-out inspection with the Tenants, but that the Tenants had refused to respond to their request and did not participate in the move-out inspection that took place on February 16, 2020.

The Landlord testified the rental unit had been returned to them damaged and uncleaned. The Landlord testified that they are requesting \$500.00 in compensation for painting the entrance hallway and \$50.00 for additional cleaning of the entrance of the rental unit at the end of this tenancy.

The Landlord testified that there were black marks, scuffs and scratches on the walls of the entrance hallway for the rental unit at the end of this tenancy. The Landlord testified that the rental unit had been freshly painted at the cost of \$3,500.00 at the beginning of this tenancy and that they felt \$500.00 in compensation was fair for their time to repaint. The Landlord was asked to elaborate on how they reached a value of \$500.00 for the painting; the Landlord testified that they felt it was fair compensation of their time, given how much they paid to have it professionally painted before this tenancy began.

The Tenant testified they agreed there were black marks, scuffs and scratches on the walls in the entrance hallway, that had been caused during the rushed move at the end of this tenancy. The Tenant disagreed that it would cost \$500.00 to repaint that section of the rental unit as it is a small cramped hallway, and that given the size of the area, it would take no more than two hours to clean or paint.

The Landlord testified that there was also an additional two hours of cleaning that was required at the end of this tenancy and that they were requesting to be compensating for their time cleaning in the amount of \$50.00.

The Tenant testified that they agree to the cost of \$50.00 for additional cleaning at the end of this tenancy.

The Landlords wrote on their application for these proceedings that they received the Tenants' forwarding address on February 26, 2020.

Analysis

Based on the testimony of these parties, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement for this tenancy, and I find that these parties entered into a one-year fixed term tenancy, starting on November 15, 2019, ending on November 14, 2020, in accordance with the *Act*.

I accept the testimony of these parties that the Tenants ended this tenancy, as of February 14, 2020. Section 45 (2) of the *Act* states that a tenant can not end a fixed term tenancy before the end of tenancy date specified in the tenancy agreement.

Tenant's notice

45 (2)*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the Tenants breached section 45 of the *Act* when they ended their tenancy early, on February 14, 2020. The Landlords are requesting \$2,500.00, one month's rent, as compensation due to the Tenants' breach of the *Act*. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlords and that the Landlords have provided sufficient evidence to prove the value of that loss. However, section 7 of the *Act*, requires that an applicant for compensation show that they took reasonable steps to minimize a loss, stating the following:

Liability for not complying with this Act or a tenancy agreement

7 (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.

I accept the initial testimony of the Landlord that they did not attempt to secure a new renter for this rental unit, instead deciding to no longer rent the unit to anyone. I find that the Landlords did not act reasonably to minimize their losses due to the Tenant's breach when they made the decision to not attempt to re-rent the rental unit after receiving the Tenants' notice to end this tenancy early.

I find that the Landlords breached section 7(2) of the *Act* when they did not take reasonable steps to minimize their losses. Therefore, I dismiss the Landlord's claim for compensation for the loss of rental income for the period between February 15, 2020, to March 14, 2020.

The Landlords have also requested to be compensated \$500.00 for repainting the entrance hallway of the rental unit at the end of this tenancy. Pursuant to section 37(2) of the *Act*, a tenant is responsible for repairing all damage to the rental unit caused during their tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

I accept the agreed-upon testimony of these parties that the rental unit was returned to the Landlord requiring repair to the entrance hallway. I find that the Tenants breached section 37 of the *Act* when they returned the rental unit damaged at the end of this tenancy and that the Tenants' breach resulted in a loss to the Landlords in their time and labour to repair the damage.

However, I do not accept the Landlord explanation for how they arrived at the \$500.00 value of that loss, that they have claimed for in these proceedings. I find that there is insufficient evidence to satisfy me of the requested value of the loss the Landlords have applied for, and I must dismiss the Landlords' claim for \$500.00 to repaint the entrance hallway at the end of this tenancy.

In spite of this, I have found that there was damage to the rental unit at the end of this tenancy and that the Landlord suffered a loss due to that damage that warrants compensation. Accordingly, I find it appropriate to grant the Landlords a nominal award of \$200.00 in compensation for their labour to repaint the entrance hallway of the rental unit at the end of this tenancy.

The last item on the Landlords' claim is for \$50.00 in compensation for two hours of additional cleaning that was required in the rental unit at the end of this tenancy. As the Tenant agreed to this claimed amount during these proceedings, I find it appropriate to award the Landlord the requested \$50.00 for cleaning the rental unit at the end of this tenancy.

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

Overall, I grant the Landlords permission to retain \$350.00 of the security deposit they are holding for this tenancy, consisting of \$200.00 in a nominal award for painting, \$50.00 for cleaning, and \$100.00 in the recovery of their filing fee, in full satisfaction of the awarded amounts.

As for the remaining \$900.00 in a security deposit that the Landlords are holding for this tenancy, I acknowledge the Landlord's argument offered during these proceedings that

the Tenants had extinguished their right to the return of their security deposit for this tenancy when they refused to attend the move-out inspection. Section 36 of the Act details the consequence for a tenant when they do not attend the move-out inspection, stating the following:

Consequences for tenant and landlord if report requirements not met

- 36 (1)** The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.

I accept the agreed-upon testimony of both these parties that the Tenants did not attend the move-out inspection. However, I find that the Tenants could not have extinguished their rights to the return of their security deposit without the Landlord first complying with section 35 of the Act. Section 35 of the Act states the following:

Condition inspection: end of tenancy

- 35 (1)** *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
- (a) on or after the day the tenant ceases to occupy the rental unit,*
 - or*
 - (b) on another mutually agreed day.*
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (3) The landlord must complete a condition inspection report in accordance with the regulations.*
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (5) The landlord may make the inspection and complete and sign the report without the tenant if*
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
 - (b) the tenant has abandoned the rental unit.*

Pursuant to section 35(2) a landlord is required to offer at least two opportunities to a tenant to schedule the inspection, section 17 of the *Residential Tenancy Regulations*

(the “*Regulations*”) provided further clarity on the requirement of these two opportunities, stating the following:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

*(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant **with a notice in the approved form.***

(3) *When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

I have reviewed the final written attempt to schedule the end of tenancy inspecting, submitted by the Landlords' into documentary evidence, and I noted that the Landlord did not use the required and approved Residential Tenancy Branch's form for this notice. Accordingly, I find that the Landlord breach section 35(2) of the Act, by not offering the Tenant the second opportunity to schedule the move-out inspection on the approved form, as prescribed in the *Act* and *Regulations*.

Due to the Landlords breach of section 35(2) of the Act, I find the Tenants could not have extinguished their right to the return of the security deposit for this tenancy.

Accordingly, I order the Landlord to return the remaining \$900.00 of the security deposit they are holding for this tenancy to the Tenants within 15 days of the date of this decision.

If the Landlords fail to return the remaining portion of this security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover their security deposit for this tenancy. The Tenants are also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover the remaining \$900.00 of this security deposit is required.

Conclusion

I grant the Landlord permission to retain \$350.00 of the security deposit they are holding for this tenancy.

I order the Landlord to return the remaining \$900.00 of the security deposit they are holding for this tenancy to the Tenants, 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: July 17, 2020

Residential Tenancy Branch