



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Towers Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Compensation for monetary loss of other money owed;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's Support Person, an Agent for the Tenant, and two Agents for the Landlord H.E. and R.E., all of whom provided affirmed testimony. The Tenant acknowledged receipt of the Notice of Hearing and a copy of the Application and both parties acknowledged receipt of each other's documentary evidence. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure); however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord's Agents, a copy of the decision any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application. At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

The parties agreed in the hearing that the person named as the tenant in the Application (Z.Z.) is actually a family member of the Tenant, who assisted them in renting the unit back in 2015. Although Z.Z. signed some of the tenancy agreements and is named as a tenant in several of the tenancy agreements, the parties were all in agreement that F.Z. was the Tenant of the rental unit.

Based on the above, I amended the Application to accurately reflect that F.Z. was the Tenant of the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for monetary loss of other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit against money owed?

Background and Evidence

The parties agreed that the Tenant initially moved into the rental unit on March 1, 2015, that rent in the amount of \$1,295.00 was due at that time, and that rent was to be paid on the first day of each month. Although the parties agreed that the Tenant paid \$1,295.00 up front for the last months rent, they disagreed on the amount paid for the security deposit. The Landlord's Agents stated that \$547.50 was paid, while the Tenant and their Agent stated that only \$500.00 was paid.

The parties also agreed that several subsequent fixed-term tenancy agreements were entered into and that several notices of rent increase were served over the course of the tenancy, the last of which was served on the Tenant in November of 2019, increasing the rent from \$1,481.00 to \$1,518.00 effective March 1, 2020. Despite the above, the parties agreed that the Tenant was asked to pay \$1,520.00 by the Landlord effective March 1, 2020, as the allowable rent increase changed between the date the Notice of Rent Increase was served and the date it took effect. There was no disagreement between the parties that a new Notice of Rent Increase was not served on the Tenant showing that \$1,520.00 would now be due.

The parties agreed that the Tenant paid March 2020 rent in the amount of \$1,520.00 and that no further rent was paid. The Tenant, their Support Person and their Agent stated that the Tenant lost their employment due to the pandemic and therefore could not pay the rent. They stated that the Tenant requested additional time to pay the rent from the Landlord in writing, but when no accommodations for the late payment of rent were agreed to, they ultimately called the Landlord on April 2, 2020, advising them that they would move out. The Tenant, their Support Person and their Agent stated that the Tenant ultimately removed their possessions from the rental unit on April 5, 2020, and returned the keys to the rental unit on April 16, 2020, and April 17, 2020.

The Agents for the Landlord denied ever being advised by the Tenant that they were moving out and stated that they became suspicious that the Tenant had abandoned the rental unit after watching them move some of their possession out and not seeing them for several weeks. The Agents for the Landlord stated that when they knocked on the door of the rental unit on April 13, 2020, there was no answer, so they entered the rental unit and found it empty. The Agents stated that after several attempts were made to contact the Tenant by phone without success, the rental unit was deemed abandoned. The Agents for the Landlord stated that as the rental unit was not clean, they had it cleaned at a cost of \$200.00. The Landlord's Agents submitted several photographs and a cleaning invoice in support of this testimony.

The Agents for the Landlord stated that they are seeking recovery of the \$200.00 in cleaning costs, as well as \$223.00 in unpaid rent for April 1, 2020 (\$1,518.00 due on April 1, 2020, less the \$1,295.00 originally retained by the Landlord for last months rent). The Agents for the Landlord also sought recovery of the \$100.00 filing fee.

The Tenant, their Agent and their Support Person argued that the \$1,295.00 originally paid at the start of the tenancy as last months rent should have been returned to the Tenant, as the Landlord was not entitled to request last months rent up-front. They also stated that the Tenant believed that they would only be responsible for rent on the days they resided in the rental unit in April 2020, not the full months rent. The Tenant, their Agent and their support person also stated that they thought they would be required to move out right away for failing to pay the rent, and so they did.

The parties agreed that Tenant provided their forwarding address in writing on April 16, 2020, when they returned most of the keys to the rental unit, and that the remaining keys were returned on April 17, 2020. The Tenant, their Agent and their Support Person argued that the Tenant should not be responsible for cleaning costs as

the Landlord did not give the Tenant a proper opportunity to clean the rental unit. The Agent for the Tenant stated that they attended the rental unit with the Tenant on April 11, 2020, for the purpose of cleaning the rental unit, and that at that time the fridge and stove were missing, and the rental unit had clearly been cleaned and painted. As a result, they argued that the testimony of the Landlord's Agents is incorrect with regards to when the rental unit was entered and cleaned. They did not however dispute that it was not left reasonably clean at the time the Tenant vacated on April 5, 2020.

Finally, the Agents for the Landlord sought authorization to retain the Tenant's security deposit against any money owed.

Analysis

Although the Tenant stated that they provided notice to end their tenancy to the Landlord's Agents by phone on April 2, 2020, the Agents denied this testimony and the Tenant did not submit any documentary evidence in support of this claim. Although a letter authored by the Tenant and dated April 1, 2020, was submitted for my consideration, it does not state that the Tenant is ending the tenancy. The Tenant also could not provide me with information in the hearing regarding the date given to the Agents for the end of the tenancy. Further to this, there is no evidence or testimony before me which satisfies me that the Tenant gave notice to end the tenancy in writing, as required by section 45 and 52 of the Act, and as a result, I am satisfied that the Tenant did not give proper notice to end their tenancy as require by the Act.

Given my finding above that the Tenant did not give proper notice to end their tenancy under the Act, the Tenant's agreement that they had removed all of their possessions from the rental unit as of April 5, 2020, and the testimony from the Landlord's Agents that they were unable to reach the Tenant by phone, I find that it was therefore reasonable for the Landlord and/or the Landlord's Agents to deem that the rental unit had been abandoned by the Tenant and to enter the rental unit pursuant to section 29 (1) (e) of the Act.

Section 37 of the Act states 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. Based on the testimony of the parties and the documentary evidence before me, I am satisfied that the rental unit was not reasonably clean when it was abandoned by the Tenant and I therefore award the Landlord the \$200.00 sought for cleaning costs.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Although the Notice of rent Increase in the documentary evidence before me states that rent is \$1,518.00 effective March 1, 2020, the parties agreed that the Tenant was required to pay \$1,520.00 by the Landlord effective March 1, 2020. The Tenant also submitted a rent receipt showing this payment.

Although the Agents for the Landlord argued that the \$2.00 increase was due to an increase in the allowable rent increase amount between the time the Notice of Rent Increase was served and the time it took affect, I find that this \$2.00 increase was invalid as it was not included in the Notice of Rent Increase served on the Tenant and rent may only be increased as set out in the Act and the Regulations. As a result, I find that the Tenant overpaid March 2020 rent by \$2.00

There is no evidence or testimony before me that the Tenant had a right under the Act to deduct or withhold April 2020 rent and there was no disagreement by the Tenant that they resided in or maintained possession of the rental unit on April 1, 2020. As a result, I find that rent in the amount of \$1,518.00 was due on April 1, 2020. Although the Landlord was not entitled to collect last months rent up-front at the start of the tenancy in 2015, as they still had this amount in their possession on April 1, 2020, I consider it a positive balance on the Tenants rent account. As a result, I consider the Tenant to have paid \$1,295.00 towards April 2020 rent. As the Tenant also overpaid March 2020 rent by \$2.00, I therefore find that the Tenant owes only \$221.00 in outstanding rent for April 2020; \$1,518.00, less the \$1,295.00 advance payment for last months rent, less the \$2.00 overpayment in March of 2020.

Based on the above, I grant the Landlord's Application seeking \$200.00 in cleaning costs and \$221.00 in outstanding April 2020 rent. As the Landlord was successful in most of their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the Act. Based on the above, the Landlord is therefor entitled to compensation from the Tenant in the amount of \$521.00

Although the parties disputed the amount of the security deposit paid, the amount claimed by the Landlord, who is the Applicant in this matter, is higher and closer to 50% of the original monthly rent owed, and I therefore accept that this was the amount paid. As the parties agreed that the Tenant provided their forwarding address in writing on April 16, 2020, and the Landlord's Application was filed on April 20, 2020, I find that the Landlord therefore complied with section 38 of the Act in relation to the security deposit.

Based on the Above, and pursuant to section 72 (2) (b), I authorize the Landlord to retain \$521.00 from the Tenant's \$547.50 security deposit. Pursuant to section 67 of the Act I therefore award the Tenant a Monetary Order in the amount of \$26.50.00; \$547.50 paid as a security deposit, less the \$521.00 owed to the Landlord for cleaning costs, outstanding April 2020 rent, and the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$26.50**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: August 27, 2020

Residential Tenancy Branch