



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to retain the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant represented themselves with the assistance of a friend.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Background and Evidence

This tenancy began in October 2018. The monthly rent was \$1,950.00 payable on the first of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant gave written notice to the landlord to end the tenancy on March 4, 2020 and vacated the rental unit on March 31, 2020. Rent was paid in full through March 2020 and no rent was paid for April 2020.

The parties participated in both a move-in and move-out inspection and prepared a condition inspection report. The landlord submits that there were various issues with the rental unit requiring cleaning and work. The tenant did not agree with the landlord's assessment of damages at the end of the tenancy and did not consent to any amount being deducted from the deposit. The tenant provided their forwarding address on the condition inspection report dated March 31, 2020.

The landlord seeks a monetary award in the amount of \$4,560.00. The landlord says that they incurred the cost of various cleaning and work for a total of \$660.00. The landlord submits that the tenant was obligated to pay rent for April 2020 as they did not provide sufficient notice for the tenancy to end. The landlord further submits that the rental unit was in such a state of disarray that they were unable to find a new occupant for May 2020.

The tenant disputes the landlord's assessment of damage to the rental unit and submits that any damage was pre-existing.

Analysis

Section 19 of the *Act* provides that a landlord may not require or accept a security deposit greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement and any deposit accepted that is greater than that amount may be considered an overpayment of rent.

In the present case, as the monthly rent was \$1,950.00 the maximum security deposit that the landlord could accept was \$975.00. Accordingly, I find that the \$1,000.00 deposit held by the landlord consists of a security deposit of \$975.00 and overpayment of \$25.00.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the case at hand the tenant provided their forwarding address on the condition inception report dated March 31, 2020. The landlord filed their application for dispute resolution on April 3, 2020. Therefore, I find that the landlord filed for authorization to retain the security deposit for this tenancy within the timeline set out in the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenant gave notice of their intention to end the tenancy on March 4, 2020 the effective date of the end of tenancy was April 30, 2020. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,950.00 on April 1, 2020. I accept the evidence of the parties that the tenant failed to pay the full rent on that date. Therefore, I issue a monetary award in the landlord's favour in the amount of \$1,950.00 for the unpaid rent for April 2020.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

The landlord submits that they were unable to find a new occupant to take possession of the rental unit for May 2020 and suffered a loss of rental income. I do not find the landlord's position to be sufficiently supported in the evidence. The copy of the condition inspection report submitted into evidence by the landlord notes some areas requiring cleaning and work but the nature of the damage noted is not such that it would reasonably take 2 months to address. I find it unreasonable that the landlord could not have completed any work to the rental unit within a few weeks such that it was ready for occupation by a new tenant. I find that any loss of rental income suffered by the landlord is not a result of the tenant's breach of the tenancy agreement but due to their

own failure to mitigate their losses and prepare the suite for a new occupant in a reasonable amount of time.

A condition inspection report completed by the parties in accordance with the *Act* and regulations is evidence of the state of repair and condition of the rental unit in accordance with section 21 of the Regulations.

While the tenant submits that the issues were pre-existing, I note that no damages are noted in the move-in inspection report signed by the parties. I find little evidence in support of the tenant's position.

I accept the landlord's submission that they incurred some costs for cleaning and maintenance of the rental unit. I find the condition inspection report and supplemental photographs submitted by the landlord to be sufficient to establish that the rental unit required some work to be done to restore it to its pre-tenancy condition. While the landlord did not submit invoices for all of their expenses, I find the landlord's explanation that they performed the labour themselves to be reasonable and their estimate of time and cost to be in line with what would be expected for work of this nature. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$660.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$975.00 and overpayment of rent of \$25.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,610.00. The tenant must be served with this Order as soon as possible. Should the tenant 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 10, 2020

Residential Tenancy Branch