



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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;
- Authorization to retain the security deposit for the tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

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. Both parties were assisted by family members.

As both parties were present service was confirmed. The tenant testified that they were served with the landlord's materials and had not provided any evidence of their own. Based on the testimonies I find the tenant was duly served with the landlord's 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?
- Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in October 2018. Monthly rent was \$2,100.00 payable on the first day of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenant gave verbal notice to end the tenancy sometime in December 2019 and subsequently moved out by December 31, 2019. No rent was paid for January 2020 and the landlord submits they were unable to find a new occupant until March 1, 2020. The landlord seeks a monetary award of \$4,200.00, the equivalent of 2 month's rent for loss of rental income.

The tenant provided a forwarding address by a letter dated April 2, 2020. The tenant did not authorize the landlord to retain any portion of the security deposit for this tenancy. The landlord submits that the rental unit required some work due to damage caused by the tenant to the carpets and countertops. The landlord submitted some photographs and receipts in support of their claim. The landlord seeks an award of \$1,200.00 for the damages and losses incurred due to the tenant.

Analysis

Section 19 of the *Act*, requires that a security deposit must not exceed one-half of one month's rent. In the case at hand, the \$1,100.00 payment exceeds the one-half limit. Section 19(2) of the *Act* allows the tenant to deduct the overpayment from rent or otherwise recover the overpayment. Therefore, I find that the \$1,100.00 payment was comprised of a \$1,050.00 security deposit and \$50.00 towards the monthly rent for this tenancy.

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

I accept the evidence that the tenant provided a forwarding address by a letter dated April 2, 2020 and the landlord filed their application for authorization to retain the security deposit on April 8, 2020. Accordingly, I find that the landlord was within the statutory timeline to file an application.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

A tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. 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 accept the testimonies of the parties that the tenant gave verbal notice to end the tenancy sometime in the month of December, 2019. I find that, as the tenants gave notice of their intention to end the tenancy in December, 2019 the effective date of the end of tenancy was January 31, 2020. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,100.00 on January 1, 2020. I accept the evidence of the parties that the tenants failed to pay the full rent on that date. I therefore issue a monetary award in the landlord's favour in the amount of \$2,100.00.

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."

While I accept that the tenant's failure to provide notice to end the tenancy in accordance with the *Act* caused some loss I find there is insufficient evidence that the landlord took reasonable steps to mitigate their rental income losses. The tenant vacated the rental suite by December 31, 2020. I do not find it reasonable that it took an additional two months to find a new occupant for the rental suite. The landlord failed to provide evidence that they made reasonable efforts to mitigate their losses. Under the circumstances, as there is insufficient evidence to show that the landlord acted in a reasonable manner to mitigate their loss of rental income I decline to issue a monetary award for any rental income loss beyond January 2020.

I find there is insufficient evidence in support of the other items for which the landlord seeks a monetary award. I find that in the absence of a proper condition inspection report prepared in accordance with the Regulations, there is insufficient evidence of the

state of the rental unit or that any damages are attributable to the tenancy. I find that the photographs and receipts submitted pertaining to the condition of the rental suite is insufficient to establish that the damage is due to the tenant or that the landlord suffered monetary losses as claimed. Consequently, I dismiss this portion of the application.

As the landlord was partially successful in their application, I allow the landlord to recover the filing fee of \$100.00 from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,050.00 security deposit and \$50.00 overpayment of rent 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 \$1,100.00, which allows the landlords to recover unpaid rent for the month of January, and the filing fee for their application.

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 13, 2020

Residential Tenancy Branch