



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL
 MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants had applied by way of the Direct Request process for a monetary order for return of the security deposit and to recover the filing fee from the landlord, which was referred to this participatory hearing and joined to be heard with the landlords' application.

Both named landlords attended the hearing, however, one of the named landlords is actually Legal Counsel for the landlord, who also translated from time to time for the landlord, and was affirmed to well and truly translate the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of her skill and ability. The landlord and one of the tenants also gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The landlord's Legal Counsel indicated during the course of the hearing that the landlord had not received a video with the tenants' evidentiary material. Any evidence that a party wishes to introduce at a hearing must also be provided to the other party, and therefore, I decline to consider the video evidence. No further issues with respect to service or delivery of documents or evidence were raised, and all other evidence provided by the parties has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for cleaning and a missing mattress cover?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 1, 2019 and was to expire on August 31, 2020, however the tenants moved out of the rental unit on March 22, 2020. Rent in the amount of \$2,300.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$2,300.00 which is still held in trust by the landlord, however a portion wasn't paid to the landlord until October, 2019. No pet damage deposit was collected. The rental unit is a single family house, and a copy of the tenancy agreement has been provided as evidence for this hearing. No move-in or move-out condition inspection reports were completed.

The tenancy agreement states: "Tenant agrees to pay, without demand, to Landlord as rent for the House the sum of \$2300 per month in advance on the first day of three month... Rent will be prorated if the term does not start on the first day of the month or for any other partial month of the term." The tenants were paying the rent at intervals of every 3 months, however on March 22, 2020 the landlord received a text message from the tenants stating that they had moved out. The landlord went to the rental home about 2 days later and found 2 letters from the 2 tenants dated March 22, 2020, and copies have been provided for this hearing. They both state, in part: "This letter constitutes my written 161-day notice that I will be moving out of this house on March 22nd, 2020, the end of my current lease." Neither letter contains a forwarding address, but both letters contain email addresses of the tenants, and reasons for vacating.

The landlord is a student and testified that she was very surprised that the tenants had vacated, and due to COVID-19 the landlord could not re-rent, and did not re-rent, but decided to quickly sell. The rental home was listed for sale at the beginning of April and sold on May 5, 2020.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$825.63:

- \$35.92 CRD (water) bill;
- \$109.46 BC Hydro bill;
- \$30.00 waste management bill

for which \$75.99 is outstanding; and

- \$44.32 CRD (water) bill
- \$259.44 BC Hydro bill;
- \$90.03 waste management bill

for which \$363.76 is outstanding; and

- \$110.88 for a mattress cover; and
- \$175.00 cleaning cost.

The landlord has provided a receipt for the mattress cover and photographs of an unclean fridge with an egg carton inside to support the cleaning claim. The landlord also claims \$112.05 for the final hydro bill, and a copy of the bill has been provided for this hearing. It is dated May 6, 2020 and the landlord testified that the hydro bills are received every 2 months. The evidentiary material indicates that the hydro usage on the bill is from March 7 to May 4, 2020.

The landlord claims the \$3,200.00 for unpaid rent, \$825.63 for the utilities, mattress cover and cleaning costs, as well as \$112.05 for the final hydro bill, and repayment of the \$100.00 filing fee.

The landlord received the tenant's forwarding address on May 27, 2020, and a copy has been provided for this hearing, dated May 8, 2020.

The tenant (ZR) testified that the landlord entered the rental unit on March 13, 2020 without any notice to the tenants, which was witnessed by a resident. By then, COVID-19 was serious in the City. The tenants moved out early because they felt unsafe. It was very serious to the tenants.

On May 10, 2020 the tenants provided the landlord with a forwarding address in writing, and a copy of the Xpresspost receipt has been provided for this hearing.

At the beginning of March, 2020, the tenants gave rent to the end of May, but moved out on March 22, 2020, and given that the landlord sold the house, and she broke the rules, the tenants should be entitled to recovery of pre-paid rent for April and May.

With respect to the landlord's claim for utility bills, the tenant testified that they paid all of the utilities before March, 2020; sometimes by e-transfer and sometimes by cash from September, 2019 to March, 2020 each time the landlord gave the tenants a bill. The landlord did not provide any receipts but would send a message confirming when the e-transfers were received.

The tenants and sub-tenants each cleaned their own rooms at the end of the tenancy, and the rest of the house was not messy.

The tenant also testified that she was waiting for the Residential Tenancy Branch to send an email with a notice of hearing for service on the landlord, and when the tenant received it, she sent it out as soon as she could.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

Counsel for the landlord submits that the tenants did not serve the Tenants' Application for Dispute Resolution until August 14, 2020, although it was filed with the Residential Tenancy Branch on May 27, 2020. The landlord did not wish to make issue of it to ensure that all matters pertaining to this tenancy were dealt with in this hearing.

The landlord received the tenants' forwarding address in writing after filing the Application for Dispute Resolution.

In beginning the landlord agreed to allow sub-lets, but the tenants moved out on short notice. The landlord seeks to keep the security deposit and \$3,200.00 rent for April and May.

Analysis

The parties agreed that rent would be \$2,300.00 per month and that it be paid every 3 months. I see no issues with that since the parties agreed.

Where a party causes a fixed-term tenancy to end prior to the expiry of the fixed term, the offending party can be required to pay compensation to the other party. However, the claiming party must do what is reasonable to mitigate any loss, and in the case of a landlord, must take steps to re-rent the rental unit as soon as possible after learning that the tenant had vacated or gave notice to vacate. In this case, the landlord didn't do that, but instead sold the rental home. I find that extenuating circumstances existed that prevented the landlord from advertising for rent due to COVID-19. Similarly, I must also find that the same extenuating circumstances existed that prevented the tenants from

staying until the end of the fixed term. Consequently, I find that the landlord has been unjustly enriched for part of the month of May, 2020.

The landlord received rent from the tenants for the entire month of May but sold the home on May 5, 2020 and the landlord must return \$1,929.00 to the tenants ($\$2,300.00 / 31 \text{ days} = \$74.19 \times 26 \text{ days remaining in May} = \$1,929.00$).

I have also reviewed the utility bills, and I find that the tenants are liable for the payment of the utilities to May 5, 2020. The bills provided by the landlord amount to \$741.25, but the landlord's Monetary Order Worksheet shows that of the first set of bills, which totals \$166.38, only \$75.99 is outstanding. It also shows that of the \$393.79 total of the second set of bills, only \$363.76 is outstanding. The tenant testified that the bills were paid when the landlord provided them, sometimes by e-transfer and sometimes in cash, but the landlord did not issue receipts. The tenant specified payments on November 30 and again in December, then on February 20, 2020 the tenants paid water, electricity and waste bills. It's clear that the tenants paid some, but considering the tenant's testimony that the landlord did not issue receipts for cash payments, I am not satisfied that the landlord has established what portions with the exception of the electric bill dated May 6, 2020, and I find the tenants are liable for \$112.05.

A tenant must leave a rental unit reasonably clean and undamaged at the end of a tenancy except for normal wear and tear. Given that there are no move-in or move-out condition inspection reports, I am not satisfied that the landlord has established that the tenants did not leave the rental unit in any different condition than it was at the beginning of the tenancy. Further, the only evidence that cleaning was required are 2 photographs showing an egg carton and crumbs in a fridge. I do not see that as being worth \$175.00 for cleaning, and I dismiss the landlord's claim for cleaning.

The tenants did not dispute the landlord's claim for the mattress protector, and I find that the landlord has established the claim of \$110.88.

The landlord filed the Application for Dispute Resolution prior to receiving the tenants' forwarding address in writing, and therefore, the tenants are not entitled to double recovery.

Having found that the landlord is entitled to \$112.05 for utilities and \$110.88 for the mattress cover, and the tenants are entitled to recovery of \$1,929.00 for May's rent and \$2,300.00 for the security deposit, I set off those amounts and I find that the tenants are entitled to the difference of \$4,006.07.

Since both parties have been partially successful, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,006.07.

This order is final and binding and may be enforced.

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: September 10, 2020

Residential Tenancy Branch