



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL; MNSDB-DR, FFT

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of the tenant's deposits, pursuant to section 38;
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord, the landlord's English language interpreter, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his interpreter had permission to assist him at this hearing. This hearing lasted approximately 44 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Both parties confirmed that they had no objections and they were ready to proceed with the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's deposits?

Is the tenant entitled to the return of her deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and ended on March 29, 2020. Monthly rent in the amount of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties for a fixed term ending on August 31, 2020. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The tenant provided a written forwarding address to the landlord by way of a letter that was sent by registered mail on July 6, 2020, which the landlord received. The Canada Post receipt and tracking number for this mailing were confirmed by the tenant during the hearing. The landlord's application to retain the tenant's deposits was filed on May 5, 2020. The rental unit is a two-bedroom, one-bathroom basement suite of approximately 419 square feet, in a house.

The landlord claimed that the tenant provided written permission for the landlord to keep the tenant's security deposit for the May 2020 rent, by way of an email, dated April 28, 2020. The landlord provided a copy of this email. The tenant agreed that she offered her security deposit but only if it was a final settlement towards all the unpaid rent sought by the landlord, which the landlord did not accept.

The tenant seeks the return of her deposits totalling \$2,200.00 plus the \$100.00 application filing fee.

The landlord seeks a monetary order of \$5,500.00 plus the \$100.00 application filing fee. The tenant disputes the landlord's application.

The landlord stated the following facts. The landlord seeks \$5,500.00 for a loss of rent from May to August 2020. The landlord seeks \$2,200.00 for each of May and June 2020, totalling \$4,400.00. The landlord seeks a rent difference of \$550.00 for each of July and August 2020, totalling \$1,100.00, because the rental unit was re-rented for a lower amount of \$1,650.00 for two months, compared to the \$2,200.00 that the tenant was paying. The tenant provided notice on March 29, 2020 and moved out on the same date. The tenant claimed that she had asthma and had lost her job but did not provide medical documents confirming same to the landlord. The tenant signed a fixed term tenancy agreement, ending on August 31, 2020. The rental unit was posted for re-rental online on April 6, 2020 at a rent of \$2,200.00 per month, and it was reduced to a rent of \$1,650.00 on April 28, 2020. Four people inquired about the unit and three people viewed it. The landlord forgot to provide copies of the advertisements and the email inquiries for this hearing.

The tenant stated the following facts. She disputes the landlord's claim for a loss of rent. She had to move back to her parents' place, as they requested her to come back, since she had asthma and was an at-risk population for the covid-19 pandemic. The tenant was laid off, so she could not afford the rent. The landlord did not dispute the tenant's reasons for moving out. The tenant's roommate moved out due to covid-19, so she was unable to help the tenant pay rent. The tenant paid rent of \$2,200.00 to the landlord for April 2020, which the landlord confirmed during the hearing.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I find that the landlord and tenant entered into a fixed term tenancy for the period from September 1, 2019 to August 31, 2020.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If she does, she may have to pay for rental losses to the landlord.

In this case, the tenant ended the tenancy on March 29, 2020, prior to the end of the fixed term on August 31, 2020. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the Act.

Section 7(1) of the Act establishes that a tenant who does not comply with the Act, Residential Tenancy Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the Act to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for four months' rent loss, totalling \$5,500.00, without leave to reapply.

I find that the tenant paid for one month's rent of \$2,200.00 for April 2020, even though she was no longer living at the rental unit. I find that this was an effort to assist the landlord in mitigating his losses, as it provided him with one month's notice to find a new tenant. I also note that the tenant moved out during the covid-19 pandemic period, due

to health and financial reasons, which I find are sufficient to explain her breach of the fixed term tenancy agreement.

I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when he advertised the unit for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done.

I find that the landlord delayed advertising the rental unit to April 6, 2020, even though he said the tenant gave him notice and moved out on March 29, 2020. The landlord did not explain the reason for this eight-day delay. The landlord also advertised the unit for the same rent as the tenant was paying of \$2,200.00 and only lowered the amount to \$1,650.00 after 22 days of advertising from April 6 to April 28, 2020. The landlord failed to lower the amount beyond this, despite the fact that he was unable to re-rent the unit from April to June 2020. I find that these factors contributed to the landlord's inability to re-rent his unit in a timely manner and a failure to mitigate his losses.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on March 29, 2020. The landlord did not return the deposits to the tenant. The tenant provided a written forwarding address to the landlord on July 6, 2020, which was received by the landlord. The landlord made his application to retain the deposits on May 5, 2020, prior to the later forwarding address being provided.

I find that the tenant did not provide written permission for the landlord to retain her security deposit of \$1,100.00. I find that the tenant made an offer of settlement for the landlord's unpaid rent claims against her, but the landlord refused the offer and did not accept it by way of email or at this hearing. Therefore, I find that this does not constitute written permission to retain the security deposit; I find that it was an offer of settlement that was rejected by the landlord.

Although the landlord's right to claim against the deposits for damages was extinguished as per section 36 of the *Act*, for failure to complete a move-out condition inspection report, the landlord made a loss of rent claim, not a damages claim.

Over the period of this tenancy, no interest is payable on the tenant's deposits. I find that the tenant is not entitled to double the value of her security deposit, only the regular return of \$1,100.00.

A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenant agrees otherwise, the landlord is only entitled to use a pet damage deposit for pet damage. Hence, the landlord did not have written permission to retain the tenant's pet damage deposit, he did not file an application to retain the pet damage deposit for pet damage specifically, and he did not return this \$1,100.00 pet damage deposit to the tenant.

Therefore, I find that the tenant is entitled to recover double the value of her pet damage deposit of \$1,100.00, totalling \$2,200.00. Even though the tenant did not apply for double the return of this deposit, I am required to consider it, as the tenant did not waive her right to it at the hearing, as per Residential Tenancy Policy Guideline 17.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$3,400.00 against the landlord. 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: September 04, 2020

Residential Tenancy Branch