



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTEND RENTAL SOLUTIONS
INC. and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

The landlord applies for a monetary award for unpaid rent, loss of rental income, damages for cleaning, garbage removal and loss of Ms. S.'s time dealing with the cleanup and re-rental of the rental unit.

The listed parties attended the hearing, the landlord by its representative Ms. SC, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence show on a balance of probabilities that the tenants owe rent, or have broken their lease causing monetary loss to the landlord? Have the tenants failed in their statutory obligation to leave the premises reasonably clean and free of damage but for reasonable wear and tear? Is the landlord entitled to be compensated for any extra work Ms. SC was put to?

Background and Evidence

The rental unit is a three bedroom basement suite in a house. The landlord rents the upper portion of the house to others. The tenancy started in September 2019 under a

one year, fixed term tenancy agreement. The monthly rent was \$2370.00 due on the last day of each month, in advance for the following month. At the start of the tenancy the landlord received and still holds a \$1185.00 security deposit. After the tenancy started the landlord received and still holds a \$1185.00 pet damage deposit.

The tenants did not pay the March 2020 rent when it came due on February 28, 2020. The landlord served the tenants with a ten day Notice to End Tenancy for non-payment of rent on March 1. The tenants accepted the Notice and, they say, vacated the rental unit at the end of the ten day period.

It is agreed that the tenants and the landlord did not communicate about the tenants leaving and that the tenants did not provide any official, written forwarding address to the landlord.

Ms. SC for the landlord testifies about a pet and the additional deposit money. At hearing the parties were informed that area of their relationship or whether the pet was a support dog, were not particularly pertinent to the issues at hand.

She testifies that following her posting of a two day notice to enter the premises, she viewed the rental unit on March 15. All tenant belongings of value had been removed, leaving discarded items strewn about the suite and premises and some food in the fridge. She presented photographs of the inside taken that day, showing significant debris on the floors and counters. The carpeting had been soiled by feces from a dog. There was dog feces on the bathroom floor.

Ms. SC says she immediately began to advertise the unit for rent and was able to secure a new tenant under a new one-year fixed term tenancy beginning April 1, 2020 at a monthly rent of \$2250.00; \$120.00 per month less than these tenants were paying.

She hired a garbage removal service at a cost of \$385.00, a carpet cleaner at a cost of \$300.00 and a cleaning service to perform a "deep clean" at a cost of \$240.00.

Since then the landlord brought, but did not pursue, a direct request application for unpaid rent. The landlord seeks the \$100.00 filing fee for that application but was informed during the hearing that the discretion to award that fee would have been for the arbitrator/adjudicator assigned to that application. That portion of the landlord's application is therefore dismissed.

Ms. SC claims that she was put to extra work having to secure new tenants and to deal with the clean-up of this rental unit.

The tenant Ms. LS testified. She indicates that since the tenants didn't stay in the rental unit for a large part of the month of March they shouldn't owe the March rent.

She says that she and her mother went to clean the rental unit on or about March 11 but all the debris had been removed and the place had already been cleaned. She admits that the tenants had left the rental unit in the state depicted by the landlord's photos but had meant to return and clean. She denies that a large cardboard box placed on a used washer and dryer in the yard belonged to the tenants.

The tenant Mr. DF testified that they did not pay rent because the landlord would not attend to a "black mould" problem in the rental unit. He left the cleaning up to Ms. LS. and her mom because he was working at the time. He claims the dishwasher never worked properly and the landlord refused to fix it. Though the dishwasher was not included as a service or facility in the tenancy agreement, in his view, since one was there then the landlord had an obligation to maintain it.

In reply Ms. SC says she has no complaints about mould from the new tenants and that there is a concrete wall in the rental unit that is prone to condensation and so must be kept clean. She denies the photos she took were taken prior to the tenant's leaving March 11. She refers to the receipts she has provided to indicate that the clean up work all happened after March 11.

Analysis

The Rent

Under the tenancy agreement the March rent was due, in full, on February 28. As was pointed out to the tenants in the landlord's February 25 email message, a tenant is not entitled to withhold rent against a landlord's obligation to provide a service or conduct a repair. If there existed a mould problem or if a service or facility is not being provided or maintained by a landlord, a tenant's recourse is to apply to the Residential Tenancy Branch for a compliance order and/or for a monetary award or rent reduction for the loss of amenity or other damage suffered as a result.

I grant the landlord \$2370.00.

Loss of Rental Income

Under this fixed term tenancy the tenants were legally obliged to pay twelve months of rent. The tenancy ended due to the tenants' breach by non-payment of March rent. Technically (see Residential Tenancy Policy Guideline 3: "Claims for Rent and Damages for Loss of Rent"), the landlord is entitled to the entire balance of the rent for the term but is also under a duty to mitigate its loss by finding replacement tenants.

In this case the landlord did mitigate its loss by re-renting for April 1. Ultimately its loss was \$120.00 per month less rent for the remaining five months of this fixed term tenancy. I award the landlord \$600.00 in that regard, as claimed.

Garbage Removal, Carpet Cleaning and House Deep Cleaning

I find that the landlord entered the rental unit and attended to cleaning only after the tenants vacated on or about March 11 and after this tenancy was ended by the ten day Notice. Ms. S.C.'s testimony was clear and forthright on that point whereas the tenant Ms. LS could only offer her testimony on this point "from what I understand." As well, the three bills and receipts for the work done in bringing the suite to re-rentable condition were all dated March 25 or later.

I have reviewed the three cleaning bills against the photographs and find them to be justified and reasonable. I award the landlord \$385.00 for garbage removal, \$300.00 for carpet cleaning and \$240.00 for "deep cleaning" of the rental unit: a total of \$925.00.

Ms. SC's Time

I dismiss this item of the claim. Ms. SC has not shown that the corporate landlord paid her any more for her work in this matter than it would have otherwise. The landlord has not shown any loss resulting from Ms. SC dealing with this rental unit in March.

Conclusion

The landlord is entitled to a monetary award totalling \$3895.00 plus recovery of the \$100.00 filing fee for this application.

I authorize the landlord to retain the total deposit money of \$2370.00 in reduction of the award. The landlord will have a monetary order against the tenants for the remainder of \$1625.00.

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 09, 2020

Residential Tenancy Branch