



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, male tenant ("tenant") and "female 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. This hearing lasted approximately 60 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and the landlord was duly served with the tenants' evidence.

Both parties affirmed 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 and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this 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 the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 15, 2019 and ended on April 30, 2020. Monthly rent in the amount of \$2,400.00 was payable on the 30th day of each month. A security deposit of \$1,200.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants provided a written forwarding address to the landlord, by way of letter that was sent by regular mail on April 26, 2020. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have any written permission to retain any amount from the tenants' security deposit. The landlord filed this application to retain the tenants' security deposit on May 14, 2020. The rental unit is a garden house, where a different tenant occupies a separate main house at the same property.

The landlord seeks a monetary order of \$16,136.25 plus the \$100.00 application filing fee. The landlord provided an updated monetary order worksheet on May 8, 2020, claiming \$577.50 for painting, drywall and sanding, \$393.75 for cleaning, \$315.00 for a cracked window replacement, \$300.00 for utilities, \$150.00 for two late rent charges, \$4,800.00 for a two-month lease break penalty, and \$9,600 for four months' rental loss.

The landlord stated the following facts. He is seeking four month's rental loss because the tenants breached the fixed term tenancy agreement and moved out on April 30, 2020, prior to the end of the term on August 30, 2020. The landlord advertised on three online websites, provided the advertisements for same, and began advertising on April 3, 2020, until July 16, 2020. The landlord initially advertised the unit for \$2,400.00 per month and then lowered it to \$2,285.00 in May 2020. The landlord re-rented the unit as of September 1, 2020 to new tenants. The tenants only gave one month's notice to move out, despite the requirement in the tenancy agreement addendum for two months' notice to move out and two months' rent penalty for doing so. The landlord showed the rental unit to 7 people, there was a minimum of 7 and up to 12 inquiries regarding the

unit. The landlord gave the tenants the rental advertisement and 19 photographs on April 2, 2020. The landlord seeks costs for cleaning, which is indicated in the tenancy agreement addendum of \$500.00. The tenants owe late rent fees and utilities, which they agreed to pay on April 5, 2020. The tenants left an unclean rental unit, cracked windows, scratches on appliances and the hood fan, and a cracked floor tile.

The tenants dispute the landlord's application. The tenants agreed to pay 40% of the total utilities of \$300.00 at \$120.00. They also agreed to pay \$25.00 per each late fee, for a total of \$50.00, of the \$150.00 claimed by the landlord, stating that \$25.00 was the maximum allowed as per the *Regulation*. The tenants agreed to pay \$250.00 for drywall and paint of the \$577.50 claimed by the landlord.

The tenants dispute the remainder of the landlord's application, claiming that they paid \$245.00 to clean the rental unit, the window was already cracked when they moved in, and the landlord failed to complete a move-in condition inspection report to show this when they moved in. The tenants both claimed that the landlord materially breached the tenancy agreement by failing to provide quiet enjoyment, as the other tenant in the main house at the rental property caused them stress, she threatened and made up rumours about them, the tenant had to move during his exams, the female tenant had to live elsewhere, and they had to move earlier because the landlord failed to deal with her.

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 tenants 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.

I award the landlord \$120.00 for utilities, \$50.00 for two late fees, and \$250.00 for drywall and painting, for a total of \$420.00. The tenants agreed to pay the above amounts during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for \$15,716.25 without leave to reapply.

Damages and Cleaning

I find that the landlord did not sufficiently prove his claim, failing to properly explain the photographs, receipts, invoices, and documents that the landlord submitted for the hearing. The landlord did not go through any of the above documents during the hearing. He did not even indicate what amounts he was seeking for each item. I notified the landlord during the hearing that he had the burden of proof, on a balance of probabilities, to prove his claim. I informed him that he could present his claim, however he chose to do so, and I provided him with ample time and opportunity to do so. I asked the landlord questions and referred to his documents, but he still failed to go through these documents during the hearing.

I find that the landlord failed to indicate the condition of the rental unit when the tenants moved in or out. No move-in or move-out condition inspection reports were completed for this tenancy. Therefore, I find that the landlord cannot sufficiently prove what damages were caused by the tenants and what damages were existing prior to their tenancy beginning. The tenants disputed the landlord's claims for damages and cleaning.

I also note that the landlord did not provide any receipts for the damages or cleaning claimed, he provided quotes with balances due. He did not indicate when the work was done, what he paid, when he paid it, how he paid it, or any other such information. He claimed that he had cancelled cheques that he could have provided for this hearing, but he did not do so.

Therefore, the landlord's claims for cleaning of \$393.75, cracked window replacement of \$315.00, and the remaining painting, drywall and sanding cost of \$327.50 (since the tenants agreed to pay \$250.00 towards this cost of \$577.50), are all dismissed without leave to reapply.

Late Rent Fees

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

(d)subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

As noted above, I awarded \$50.00 to the landlord for both late rent fees, as the tenants agreed to pay this amount during the hearing. The remainder of the landlord's late rent fees of \$100.00 is dismissed without leave to reapply.

I find that the landlord is only entitled to a \$25.00 late fee per occurrence, for a total of \$50.00. I find that the landlord is not entitled to \$75.00 per occurrence for a total of \$150.00 total, as claimed.

This is as per section 7(1)(d) of the *Regulation* above. The landlord indicated a fee in his tenancy agreement addendum. The landlord cannot contract out of the *Act* or the *Regulation* by indicating a higher amount of \$75.00 in his residential tenancy agreement addendum, as this is contrary to the maximum of \$25.00 as per the *Regulation*.

Utilities

As noted above, I awarded \$120.00, which is 40% of the \$300.00 total claimed by the landlord for the utilities, as the tenants agreed to pay the above amount. The remainder of the \$180.00 for utilities is dismissed without leave to reapply.

Both parties agreed that the tenants' tenancy agreement addendum indicates that they are only responsible to pay 40% of the total utility costs, while the other tenant living in the main house was responsible to pay 60%.

The landlord did not explain his hydro and gas bills during the hearing. The tenants disputed the amounts indicated, including previous unpaid charges, and the monthly installments, all of which were indicated under the other tenant's name, who lived in the main house at the rental property. The tenants claimed that there were outstanding amounts from prior to their tenancy from the other tenant.

I asked the landlord to explain the bills provided and he failed to sufficiently explain same. The bills were confusing, as they indicated past due amounts and monthly installment amounts under the other tenants' name. Therefore, I have only awarded 40% of the total utilities claimed of \$300.00, as agreed by the tenants.

Rent Loss and Lease Break Fee

I find that the landlord and tenants entered into a fixed term tenancy for the period from July 15, 2019 to August 30, 2020.

Subsection 45(2) of the Act sets out how tenants 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 tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord.

In this case, the tenants ended the tenancy on April 30, 2020, prior to the end of the fixed term on August 30, 2020. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do 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 tenants' 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 \$9,600.00, plus the lease break fee of \$4,800.00, both without leave to reapply.

The tenants claimed that they vacated the rental unit due to a material breach of the tenancy agreement. The landlord agreed that he had one month's notice for the tenants to vacate, which I find is sufficient notice and time for the landlord to re-rent the unit.

I note that the tenants moved out during the covid-19 pandemic period. The tenants both testified that their tenancy was being threatened by the other tenant living at the main house at the rental property, they suffered undue stress during their school exams, the female tenant had to stay at another location, and they had to move during exams.

The landlord was unsure of how many inquiries were made by prospective tenants, claiming that it was somewhere between 7 and 12. The landlord advertised the unit for the same rent as the tenants were paying of \$2,400.00 and only lowered the amount to \$2,285.00 sometime in May 2020, which is over a month or longer after it was first advertised on April 3, 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. I also find that the covid-19 pandemic may also have contributed to the difficulty in re-renting the unit, which is outside the control of both parties.

I find that the lease break fee of two months' rent of \$4,800.00 is a penalty and was not substantiated by the landlord. I find that the landlord failed to show that these are liquidated damages, he did not indicate them as such damages in the tenancy agreement addendum, and he did not indicate how it was a genuine pre-estimate of the loss for breaching the fixed term.

As the landlord was mainly unsuccessful in this application, except for what the tenants agreed to pay, I find that he is not entitled to recover the \$100.00 filing fee from the tenants.

Security Deposit

The landlord continues to hold the tenants' security deposit of \$1,200.00. No interest is payable on the deposit during this tenancy. As the landlord applied to retain the deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$420.00 from the tenants' security deposit of \$1,200.00.

I order the landlord to return the remaining \$780.00 from the tenants' security deposit to the tenants within 15 days of receiving this decision. The tenants are provided with a monetary order for \$780.00. Although the tenants did not file an application for the return of their deposit, I am required to consider it on the landlord's application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$780.00 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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 15, 2020

Residential Tenancy Branch