



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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 deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 150 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application and evidence by registered mail sent to the forwarding address provided by the tenant on June 17, 2020. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on June 22, 2020, five days after mailing, in accordance with sections 88, 89 and 90 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 deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in December 2019. Monthly rent was \$1,450.00 payable on the first of each month. A security deposit of \$725.00 and pet damage deposit of \$725.00 were collected at the start of the tenancy and are still held by the landlord. The tenancy ended by way of a Mutual Agreement to End Tenancy signed by the parties on May 28, 2020 providing an end of tenancy date of May 31, 2020.

The parties participated in a move-out inspection on June 4, 2020 and the landlord prepared a condition inspection report. The tenant disagreed with the landlord's assessment of damage and did not sign the report or authorize the landlord to make any deductions from the deposits. The tenant did provide a forwarding address on the condition inspection report.

The landlord submits that the rental unit required cleaning and had some damage attributable to the tenancy. The landlord submitted into documentary evidence photographs of the rental suite and receipts for cleaning supplies and materials. The landlord submits that the total cost of the work is \$576.00.

The landlord also seeks a monetary award in the amount of \$1,450.00, the equivalent of one month's rent, and submits that the tenant did not provide sufficient notice to end the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case I accept the evidence of the landlord that they were provided with the tenant's forwarding address on the condition inspection report of June 4, 2020. The landlord filed their application for dispute resolution on June 17, 2020, within the 15 days provided under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

While the landlord seeks a monetary award for loss of rent for June, 2020, the evidence before me is that the landlord entered into a Mutual Agreement to End Tenancy on May 28, 2020, agreeing to end the tenancy on May 31, 2020. I find that this is not an instance where the tenant gave insufficient notice to end the tenancy in contravention of section 45 of the *Act*, but the parties agreeing in writing pursuant to section 44(1)(c). As such, I find that the parties agreed that the tenancy ends on the effective date of the Mutual Agreement and the landlord is not entitled to any further rent or notice pursuant to the *Act* and tenancy agreement. As the tenant did not breach the *Act*, I find the landlord is not entitled to a monetary award for unpaid rent or rental income losses for June, 2020. I dismiss this portion of the landlord's application accordingly.

The landlord submits that the rental unit required cleaning, maintenance and work due to the condition at the end of the tenancy. I find that the landlord's evidence in the form of the completed condition inspection report, photographs and receipts to be sufficient to establish that they incurred costs as a result of the tenancy. The portion of the condition inspection report completed and signed by the parties at the start of the tenancy does not note any damage and indicates that some items were brand new. The portion of the report completed at the end of the tenancy, which the tenant disagreed with and refused to sign, notes a number of deficiencies. I find the multiple photographs submitted by the landlord to be sufficient to find that the landlord's assessment of damage to be accurate. I accept the landlord's submission that the cost of the cleaning, repairs and work is \$567.00. Therefore, I issue a monetary award in the landlord's favour in that amount.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$667.00 from the tenant's security and pet damage deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

The landlord is authorized to retain \$667.00 of the deposits for this tenancy.

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: October 8, 2020

Residential Tenancy Branch