



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This Review Hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities, an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recovery the filing fee from the tenants for the cost of the application.

A hearing had been conducted on August 20, 2020 and the landlords were successful in obtaining a monetary order. The tenants applied for a review of the Decision and resulting order based on grounds that the tenants were unable to attend the hearing and that the tenants had new and relevant evidence. A consideration for a Review Hearing was examined, and this Review Hearing was ordered.

The *Residential Tenancy Act* specifies that following a Review Hearing, I may confirm, vary or set aside the original order(s) made.

An agent for the landlords and both tenants attended this hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to the exchange of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partials satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 15, 2019 and expired on November 30, 2019, thereafter reverting to a month-to-month tenancy. The tenancy ended on May 15, 2020. Rent in the amount of \$4,500.00 was payable on the 1st day of each month, and the tenants paid a pro-rated amount for the first month of the tenancy. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$2,250.00 and no pet damage deposit was collected. The rental unit is an apartment on the 15th floor of a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenants stopped paying rent for 2 months, and the landlords asked what they wanted to do, and the tenants offered the owner to occupy it. The tenants preferred to go back to their own property due to the COVID-19 pandemic, and their renters didn't show up. The tenants were told that the owner didn't want to live there, but the tenants put a Stop Payment on the rent cheques for April and May, 2020. In May, the tenants emailed asking to treat the email as a month's notice, and the parties set up a time to complete the move-out condition inspection and return the keys. Copies of emails have been provided for this hearing.

The rental unit was advertised on Craigslist as well as the landlords' own website starting on May 15, 2020 when the keys were returned. The rental unit was re-rented for July 1, 2020.

The landlords received the tenants' forwarding address in writing on the move-out condition inspection report, signed by the parties on May 15, 2020. The tenants agreed that the landlords should keep the \$2,250.00 security deposit, "Towards May rent." It also shows in handwriting, "1/2 month rent for security deposit."

The landlords claim unpaid rent in the amount of \$4,500.00 for each of the months of April and May, 2020; recovery of the \$100.00 filing fee; and an order permitting the landlords to keep the \$2,250.00 security deposit.

The first tenant (SE) testified that they had been excellent tenants since May, 2019. Then COVID-19 hit in the spring. The tenants have their own home, but their tenants, who were supposed to rent their property, couldn't attend because the boarder was closed. They were supposed to stay in the tenants' home for 6 months, but couldn't. The tenants asked the landlord for solutions because the tenants' rental income was in a crunch.

At the end of March, 2020, the landlords' agent asked about keys, and said she would accept the security deposit as payment for May's rent, and April's rent was already free as

an act of goodwill by the landlord. The landlord (WT) said that April's rent was waived without stipulation as a goodwill gesture due to the pandemic. The landlords had post-dated cheques, so the tenants stopped payment on the April and May, 2020 cheques.

For May's rent, the parties agreed that the landlords would keep the security deposit, and the parties signed the move-out condition inspection report and returned the keys on May 15, 2020. The tenants actually moved out in March, 2020, not wanting to stay due to COVID-19 and the elevator.

The second tenant (RE) testified that she couldn't work due to health issues, and asked that I review all of the evidence, specifically email strings.

The tenant also lead evidence with respect to furniture left in the rental unit for the benefit of the landlords.

Analysis

Firstly, I make no findings or orders with respect to furniture left in the rental unit, and I find that testimony is not relevant to this hearing.

I have reviewed all of the evidence of the parties, including the strings of emails, which show that the tenants attempted to negotiate a trade with the owner or a concession of rent for April and May. On April 30, 2020, the landlord (WT) wrote to the tenants stating that the owner was very kind to offer as an act of goodwill during the COVID-19 pandemic, free rent for the month of April, and asks that the tenants advise if they will be giving notice to vacate, and that "today is the last day of the month." The landlord (WT) also replied to another email of the tenants that it was a goodwill gesture by the owner, the April rent would be removed from the ledger, and confirms that notice to vacate requires one calendar month notice. The tenants gave notice to vacate that day by email, which was acknowledged by the landlord on April 30, 2020 effective May 30, 2020.

To me there is no question that the landlord agreed that no rent would be payable for April, 2020, and as a result, the tenants put a Stop Payment on the rent cheque.

The move-out condition inspection report is dated May 15, 2020 and shows that the tenants agreed to the landlords keeping the security deposit for May's rent, but it does not stipulate that it is for the entire month of May. Regardless of what date the tenants actually vacated, the tenants were bound by the tenancy agreement until the end of May.

In the circumstances, I find that the tenants are indebted to the landlords half a month's rent, and that the landlords have retained the security deposit for half a month's rent.

Therefore, I vary the order made on August 20, 2020, and I order the landlords to keep the \$2,250.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants in the amount of \$2,250.00.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$2,250.00 security deposit, and I vary the order made on August 20, 2020, and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,350.00.

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: October 15, 2020

Residential Tenancy Branch