



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. During the course of the hearing, the landlord testified as to damages claimed as well as against the tenant, and evidentiary material in that regard has also been provided for this hearing. I find that the landlord has put the tenant on notice that the application includes damages, and this Decision reflects that claim.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for deep cleaning at the end of the tenancy?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on January 15, 2020 and was to revert to a month-to-month tenancy after July 31, 2020. However, the tenant vacated the

rental unit on April 15, 2020. Rent in the amount of \$1,800.00 was payable on the 15th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord lives in the upper level of the home. A copy of the tenancy agreement has been provided for this hearing. No move-in or move-out condition inspection reports were completed.

The tenant gave the landlord notice to vacate by text message on March 28, 2020. A copy has been provided for this hearing by the tenant, but it does not indicate a vacancy date, and the landlord disputes that it was a notice to end the tenancy.

The landlord further testified that he tried to advertise but due to COVID-19 he had to have the rental unit deep-cleaned before showing it. The landlord testified that he first advertised in May, 2020 on Kijiji after the deep cleaning was done, but the landlord has not provided copies of any advertisements. The landlord has provided a copy of a cleaning invoice dated April 30, 2020 in the amount of \$325.50, which the landlord claims as against the tenant. The rental unit was re-rented for August 8, 2020.

The landlord claims \$5,725.50 as follows:

- \$6,300.00 for unpaid rent
 - April 15 to May 15 \$1,800.00; and
 - May 15 to June 15 \$1,800.00; and
 - June 15 to July 15 \$1,800.00; and
 - July 15 to July 31, 2020 \$900.00; and
- \$325.50 for deep cleaning;
- - \$900.00 Security Deposit.

The tenant testified that he moved into the rental unit on January 15, 2020 and moved out on March 20, 2020. Rent was paid in full to April 15, 2020, but none was paid for the last half of April or after.

On March 28, 2020 the tenant gave the landlord notice to end the tenancy by text message, however it did not contain an effective date of vacancy.

The tenant was ill and due to COVID-19 became unemployed, and is still unemployed. The landlord did not offer a repayment schedule.

The tenant also testified that someone was in the apartment using the tenant's Netflix and Prime; someone was living there in May and June and the tenant cancelled both television accounts in June, 2020.

Analysis

Firstly, in order to be effective, a notice to end a tenancy must be in writing and must contain an effective date of vacancy. During the Pandemic period, a party is permitted, with certain specifications, to provide documents by email, not by text messaging. The tenant's notice to end the tenancy does not qualify for those reasons.

Where a landlord claims unpaid rent or loss of rental revenue as a result of a tenant vacating the rental unit prior to the end of any fixed term, the landlord must prove that he did whatever was reasonable to mitigate, or reduce any financial loss. In this case, the landlord testified that the rental unit was re-rented for August 8, 2020 and that he advertised on Kijiji after the deep cleaning was done, but has provided absolutely no evidence to substantiate or support that testimony.

In a month-to-month tenancy, the tenant's notice to end a tenancy must be given the day before rent is payable under the tenancy agreement, which in this case is the 15th day of each month. The parties agree that the tenant that he paid rent to the 15th day of April but paid no rent after that.

The tenant testified that he moved out on March 20, 2020 and the landlord testified that he received notification from the tenant that he had vacated on April 15, 2020. I find that any notice to end the tenancy given by the tenant even as early as March 28, 2020 when the text message was sent to the landlord, would not have been effective until the 15th of May, 2020, and the tenant is indebted to the landlord the sum of \$1,800.00. Given that the landlord has not established mitigation, and considering the testimony of the tenant that someone had been using the tenant's Netflix and Prime television accounts, I am not satisfied that the landlord has established any further rent owing.

With respect to the deep-cleaning claim, given that there are no move-in or move-out condition inspection reports, I am not satisfied that the landlord has proven that the tenant didn't leave the rental unit reasonably clean, which is a requirement under the law. To deep-clean after a tenancy and during the Pandemic is not the tenant's responsibility.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a \$900.00 security deposit, and I order that the landlord keep that amount in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference of \$1,000.00 ($\$1,800.00 + \$100.00 = \$1,900.00 - \$900.00 = \$1,000.00$).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$900.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

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 23, 2020

Residential Tenancy Branch