



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on July 20, 2020 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 4, 2020 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on July 1, 2018. At the outset of the tenancy the Landlord collected \$1,375.00

as a security deposit. Rent of \$2,750.00 was payable on the first day of each month. On April 6, 2020 the Parties entered into an agreement over email to a reduced monthly rent of \$2,000.00 for May, June and July 2020.

The Landlord states that the Tenant moved out of the unit without any notice. The Landlord states that the Tenant informed the Landlord on July 1, 2020 by text that it had moved out of the unit. It is noted that the Landlord did not provide a copy of this text as evidence. The Landlord states that a property manager was hired and that on July 15, 2020 the unit was advertised on two online sites for rent at \$2,750.00 per month. The Landlord states that the unit was advertised as available for August 1, 2020. The Landlord states that the unit could not be rented earlier as the Tenant left the unit with damaged floors and needing paint and cleaning. The Landlord claims \$2,000.00 for unpaid July 2020 rent. The Landlord states that although a new tenant was not found for August 2020 this was not the fault of the Tenant.

The Landlord states that the Tenant refused to attend a move-out inspection. The Landlord states that many emails and texts were sent for an inspection. The Landlord could not provide other specifics. The Landlord confirms that no move-out inspection and report was completed. The Landlord claims \$400.00 as cleaning costs. The Landlord confirms that no receipt has been provided for this claim.

The Tenant states that the Landlord sent offers for a move-out inspection before the move-out date and for an inspection on June 30, 2020. The Tenant states that they met on June 30, 2020 with the Landlord's agent at the unit and completed a visual inspection. The Tenant states that the keys were given to the agent who informed them that no report could be done because there was no move-in inspection. The Tenant states that they left the unit reasonable clean at the end of the tenancy. The Landlord states that a copy of the move-in inspection was provided.

The Landlord confirms it has not provided any photos or supporting evidence of the state of the unit at move-out or of the advertising. The Landlord states that the unit was listed for sale and sold in September 2020 and that the sale was fast given its location.

The Tenant states that on March 30, 2020 the Tenant gave the Landlord notice to move out of the unit for May 1, 2020. The Tenant states the Landlord then offered to reduce the rent, so the Tenant agreed to stay until July 31, 2020. The Tenant states that on May 31, 2020 and by email the Tenant gave the Landlord notice to move out on July 1, 2020. The Tenant states that the Parties have always communicated by email during the tenancy. The Tenant states that the Landlord replied to its email on June 7, 2020 at 10:58 a.m. The Tenant confirms that a copy of this email was not provided as evidence for this hearing and asks that they be allowed to submit it after the hearing. The Landlord states that they did not receive a copy of the May 31, 2020 letter in the Tenant's evidence package. The Tenant states that it was included in the evidence package.

The Landlord states that no forwarding address was received from the Tenant. The Landlord states that it only received the Tenant's address in its application received by the Landlord on July 31, 2020. The Tenant states that it gave a forwarding address to the Landlord multiple time and that it first gave the forwarding address with its notice to end the tenancy on March 30, 2020. The Tenant states that the forwarding address was again given to the Landlord with its second notice to end tenancy given on May 31, 2020 by email. The Tenant submits that it again provided it forwarding address by email on June 21, 2020.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this

Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The Landlord has not provided any supporting evidence of damage to the unit such that it could not be occupied at any time in July 2020. Given the Tenant's evidence of having left the unit reasonably clean and without any supporting evidence from the Landlord to substantiate otherwise I find on a balance of probabilities that the Landlord has not substantiated the cleaning costs claimed by the Landlord. I dismiss the claim for \$400.00 in cleaning costs.

Whether or not the Tenant gave sufficient notice to end the tenancy, it is undisputed that the Landlord knew at least by July 1, 2020 that the Tenant had moved out of the unit. I also find it curious that the Landlord did not respond to the Tenant's evidence at the hearing that the Landlord's agent conducted a visual move-out inspection on June 30, 2020 with the Tenant when the keys were returned and I found this part of the Tenant's evidence to be persuasive. Given that the Landlord did not provide any evidence to support that the unit was advertised for rent, that the Landlord's evidence of damage to the unit has not been substantiated, and considering the Landlord's evidence that the unit was not advertised for August 1, 2020 occupancy, I find that the Landlord has failed to provide evidence of reasonable efforts to mitigate any rental losses for July 2020. I therefore dismiss the claim for unpaid rent or rental loss. As neither of the Landlord's claims have met with success, I find that the Landlord is not entitled to recovery of the filing fee.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. None of the Tenant's letters in relation to sending the forwarding address contain any email identifiers and there is no evidence that the Tenant received a reply from the Landlord to any emails in relation to the forwarding address. Given the Landlord's evidence of

not having received a forwarding address, I therefore find on a balance of probabilities that the Landlord did not receive the Tenant's forwarding address. The Tenant is therefore not entitled to return of double the security deposit. However, as the Landlord still holds the deposit and has not been entitled to retain any portion of the security deposit for losses, I find that the Landlord must return the original security deposit plus zero interest of \$1,375.00. As the Tenant's claim for return of the security deposit has been successful, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,475.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,475.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 18, 2020

Residential Tenancy Branch