



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on September 21, 2020, and November 20, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the money owed; and,
- to recover the filing fee from the Tenants for the cost of this application.

One of the Tenants, A.P, attended both hearings with her mother, L.P. The Landlord was also present for both hearings. The first hearing was adjourned due to service issues, and due to an emergent medical situation, as outlined in the Interim Decision following the last hearing.

At the first hearing, both parties exchanged and confirmed each other's address for service. Both parties were ordered to re-serve their evidence on each other, to the confirmed address, following the hearing on September 21, 2020. The Tenant confirmed receipt of the Landlord's evidence package and did not take issue with the service of that package. The Landlord confirmed receipt of the Tenant's evidence package and did not take issue with the service of that package.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

I note the Landlord filed his initial application on June 9, 2020, for “unpaid rent” and to claim against the security deposit, totalling \$880.00. I note no other grounds were selected on that application. Although the Landlord did not apply for other remedies beyond unpaid rent on his initial application, I find it reasonable to amend the Landlord’s application to include compensation for missing keys, as these items were mentioned on the application itself, and the items were also included on the initial Monetary Order Worksheet. Further, the Tenant was aware of the issues being sought on the initial application and was prepared to speak to the issues surrounding rent owed, and the missing keys. I hereby amend the Landlord’s application, pursuant to section 64(3)(c), to include rent, as well as his claim for other damage or loss (only relating to the keys, as listed on the initial application).

I note that, as part of the Landlord’s evidence package served to the Tenant in the days leading up to this hearing, the Landlord attempted to increase the amounts he was seeking for damage or loss under the Act. However, he also confirmed he did not file an amendment to his claim to add or modify any of the initial items he applied for. I note that in order to modify a claim or increase amounts sought, the application must submit an amendment form, pursuant to Rule of Procedure 4.1. Given this was not done, I find the Landlord’s claim is limited to the amount he listed on his initial application form, for \$880.00.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities or for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that the Tenants moved into the property on April 1, 2019. Monthly rent was \$1,730.00 per month, due on the first of the month. The Tenants paid a security deposit of \$865.00, plus a \$250.00 for key deposits (including 2 access cards, 2 suite keys, and 2 mail keys). In total, the Landlord collected \$1,115.00 in deposits for this tenancy. Both parties agree these amounts were paid at the start of the tenancy, and both parties also agree that the Landlord has since returned \$385.00 after the Tenant vacated the unit in the spring of 2020.

A move-in inspection was done on March 10, 2019, and all parties signed this document. However, the condition inspection report shows that the Landlord never signed the move-out portion of the condition inspection report. The Tenant stated that she was never given an opportunity to do a walkthrough move-out inspection with the Landlord at the end of the tenancy, and she was only ever given a partially completed move-out inspection report to sign. The Tenant stated that the building manager came down to hand the move-out condition inspection report to her on June 4, 2020, and the Landlord was not present. The Tenant stated that she was only asked to sign the document, and was never given a chance to either walk through the apartment with the Landlord or see that he signed off on it.

The Tenant stated that when she returned on June 4, 2020, she tried to return the keys to the Landlord, via the building manager, but the building manager would not accept them. It appears the building manager hand delivered a copy of the move-out inspection on behalf of the Landlord, as he was not on site that day. The Landlord denies that the Tenant ever tried to return the keys and stated she should have made better attempts to return all the keys. The Landlord feels the Tenant easily could have mailed the keys back, or left the keys in the rental unit, or the mailbox.

The Landlord's monetary claim will be addressed in the same order, for the same amounts that he listed on his initial application and monetary order worksheet submitted on June 9, 2020. They are as follows:

- 1) \$405.00 – unpaid September 2019 rent

The Landlord stated that that above noted amount is the amount that remains unpaid for the month of September 2019. The Landlord noted that the Tenants always paid by e-transfer, and he provided a couple of e-transfers, but not all of them. The Landlord stated that each of the Tenants would send him half of the rent, individually, despite being under the same tenancy agreement. The Landlord stated that the Tenants, one in particular, often made partial and/or late payments.

The Landlord asserts that he had a phone conversation with the other tenant whereby he was verbally authorized to retain \$405.00 from the security deposit to compensate for the unpaid rent of \$405.00. The Landlord stated he did not get any authorization in writing to deduct this amount. The Tenant who was present at the hearing denied that this ever happened, and she insists that rent for this period was paid, in full. The Tenant

stated that the Landlord decided what to do with the deposits on his own, without their consent.

Neither party provided complete e-transfer history or copies of the emails showing all of the transfers that were sent. The Landlord did not provide any receipts to the Tenant for amounts paid and stated that since e-transfers were used, he never issued receipts. There is a spreadsheet drafted by the Landlord, which shows he tried to track and explain some of the payments made.

2) \$230.00 – unpaid rent for April 2020

The Landlord stated that, as of October 2019, one of the Tenants, named E.D.C, moved out, and as of that time A.P. was solely responsible for rent. The Landlord stated that the Tenant, A.P., ran into financial troubles in April 2020, and failed to pay 230.00 worth of rent for that month. More specifically, the Landlord stated that the Tenant paid \$1,200.00 via e-transfer (a copy of which was provided into evidence), and the government paid \$300.00 towards her rent, as a supplement.

The Tenant agreed that she only paid \$1,200.00 via e-transfer, and also agreed that the government paid \$300.00. The Landlord and the Tenant appear to have further disagreements about whether or not the security deposit was to be used to pay for other outstanding rent amount for that month.

3) \$125.00 – Set of Keys

4) \$50.00 – Access Card

The Landlord stated that he issued the Tenants 2 access cards, as well as two sets of keys to the mailbox and the front door. The Landlord stated that he never received these keys back from the Tenants. The Landlord stated that the Tenants should have made a better effort to return the keys. The Landlord stated that it cost him \$100.00 per access card, to have the cards replaced, plus \$25.00 for each set of regular keys that were not returned.

On or around June 4, 2020, the Landlord stated that he had the building manager give the move-out condition inspection report to the Tenant on his behalf, as he was not available. The Tenant stated that it was at this time she attempted to return the keys, and she stated that the building manager refused to take them. The Landlord stated that the Tenant showed up and was “kicking and screaming” so the building manager asked her to leave and did not take the keys back. The Tenant stated that this never

happened, and she simply tried to give the keys back but the building manager wouldn't accept them, as she did not want to get involved in the dispute between the Landlord and the Tenant.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord's monetary claim will be addressed in the same order, for the same amounts that he listed on his initial application and monetary order worksheet submitted on June 9, 2020. They are as follows:

- 1) \$405.00 – unpaid September 2019 rent

Having reviewed this matter, I find it important to note that the burden of proof rests on the Landlord to substantiate what is owed and to support his application for monetary compensation. I accept that rent, in the amount of \$1,730.00 was due each month, on the first of the month, as per the tenancy agreement. I also accept that these amounts were generally paid by e-transfer, where each Tenant would pay their portion directly to the Landlord.

The parties do not agree on what amount is owing for September 2019.

When reviewing the evidence before me, I note the Landlord drafted an excel spreadsheet, showing the e-transfers, and the dates of payments throughout 2019. However, I find the spreadsheet is poorly laid out, and poorly labelled, and it is not sufficiently clear what amounts were paid, when, and by who. I do not find the Landlord's spreadsheet is sufficiently clear, such that I could be satisfied that he is still owed \$405.00 for September 2019. I also note the Landlord did not provide any explanation in the hearing to clarify what amounts were received, when, and by who. The Landlord only spoke generally to the payments around September 2019, and to the fact that he believed he had verbal authorization to keep \$405.00 from the security

deposit to cover this amount. Ultimately, I dismiss this item, in full, as the Landlord has not sufficiently clarified how this amount was calculated and that the Tenants failed to pay this amount.

2) \$230.00 – unpaid rent for April 2020

Having reviewed this matter, I find that rent, in the amount of \$1,730.00 was due on April 1, 2020. I further find the Tenant only paid \$1,500.00 in rent for the month of April 2020, which was comprised of a \$1,200.00 e-transfer, plus a \$300.00 subsidy from the government. I find this leaves a balance owing of \$230.00 for that month. I award the Landlord this item, in full.

3) \$125.00 – Set of Keys

4) \$50.00 – Access Card

I have considered the testimony and evidence on this matter. I turn to the following portion of the Act:

Leaving the rental unit at the end of a tenancy

37 (2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Having reviewed the testimony and the text messages between the parties in and around the end of the tenancy. Although some of the text messages are low resolution and illegible, some were not. It appears the parties substantially disagreed with how to manage the security deposits, the keys, the condition inspection report and any amounts owing at the end of the tenancy. There also appears to have been some confusion around a few of the Landlord's possessions (lamps etc) which were temporarily misplaced when the Tenant moved out. The Tenant appears to have taken issue with the fact that the Landlord did not fully complete and sign the condition inspection report, prior to asking her to sign it. It also appears the building manager was not comfortable signing the report on the Landlord's behalf, which led to further disagreement about the keys, and finalizing the paperwork and the deposits.

In the absence of any written agreement between the parties, I find there is no evidence there was ever a meeting of the minds with respect to whether the Landlord was authorized to retain any of the deposits. As such, he was not entitled to unilaterally decide to keep the deposits, at any point during or at the end of the tenancy, prior to applying for dispute resolution for permission to retain the deposits to cover money he believed to be owed. In any event, the Landlord appears to have substantially misunderstood the rules regarding how and when it is appropriate to retain some of the deposits he held throughout the tenancy.

I note the following portion of the Act:

Return of security deposit and pet damage deposit

38 (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that:*

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

I find no evidence the Landlord had any legal basis to retain the deposits he held.

Returning to the issue regarding the keys, and the Landlord's claim to recover costs associated with the key replacement, I note it is undisputed that the Tenants were provided 2 key cards, and 2 sets of keys when they moved in. I note the Landlord stated on his initial application and worksheet that he is seeking \$125.00 for a set of keys held by the Tenant, plus \$50.00 for the cost of a new access card. However, in the hearing, the Landlord stated that it cost him \$100.00 to replace each key card (fob), plus \$25.00 x2 for the two sets of physical keys that the Tenants never returned. The Landlord failed to explain why the amounts laid out on his application and worksheet are inconsistent with the amounts he explained in the hearing. I find the Landlord's testimony and documentary evidence are internally inconsistent.

As the applicant on this matter, the onus is on the Landlord to prove his claim and the value of his loss. Not only must he demonstrate that the Tenant breached the Act, and caused a loss, but the Landlord must be able to demonstrate the value of his loss. I do not find the Landlord has provided a sufficiently clear or consistent account of what the keys actually cost to replace.

As per section 37(2)(b) of the Act, as laid out above, the Tenant is required to give the Landlord all keys back. Although the Tenant states she attempted to return the keys to the building manager, I find she should have done more to ensure the keys were returned to the Landlord. The Tenant could have left the keys in the rental unit when she was finished, or mailed the keys to the Landlord's address for service/put them in the mailbox.

I find the Tenant's failure to take further and sufficient steps to ensure the keys were returned is a breach of the Act. I accept that the Landlord would have incurred some costs to replace keys or to re-key locks. However, as stated above, I find the Landlord has done a poor job clarifying what these amounts were.

I note that as an arbitrator, I may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I award a nominal award of \$150.00 for costs associated with the Tenant not returning the keys.

Since the Landlord was partially successful in this application, I award him the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act. In total, I award the Landlord \$480.00 for the April rent, a nominal award for the keys, and the filing fee.

I note the Landlord has returned \$385.00 of the total deposits he held (\$1,115.00). As such, the Landlord still holds \$730.00 in deposits. As stated above, I find there is insufficient evidence the Landlord had any legal basis or consent to retain any of the deposits, as he asserts.

Given all of this, I **authorize** the Landlord to retain the amount I have awarded him, \$480.00, from the \$730.00 he still holds in full satisfaction of the money owed, which I

find leaves a security deposit balance of \$250.00, which must be returned to the Tenants. I will issue a monetary order for the Tenants for this amount.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$250.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: November 24, 2020

Residential Tenancy Branch