



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL-S, FFL

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages or compensation under the Act, for a monetary order for unpaid rent, permission to retain the security deposit, and for the return of their filing fee.

This Hearing decision should be read in conjunction with both Interim decisions dated July 30, 2020, and September 3, 2020.

The Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in her testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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 Matter - Landlord Cautioned

During this third hearing, the Landlord was again cautioned three times regarding personal conduct, outbursts, and the interruption of the other parties’ testimony.

Both parties to this dispute were again advised of the expected appropriate conduct during these proceedings.

When the Landlord continued to interrupt these proceedings, the Landlord's phone line was during the Tenants' testimony in order to prevent further disruption to the proceedings.

The Landlord was invited back to these proceedings for the periods of their testimony.

Preliminary Matter – Landlord's Evidence

During these proceedings, it was noted that the Landlord had submitted additional evidence to the Residential Tenancy Branch on October 9, 2020, 6 days before these proceedings.

The Tenant testified that they had received this additional evidence from the Landlord on October 12, 2020, three days before these proceedings. The Tenant testified that they did not have enough time to review this evidence.

The Landlord was advised pursuant to the Rules of Procedure; they were required to have all evidence they intended to rely upon during these proceedings, served to the Tenants no later than 14 days before these proceedings.

The Landlord was advised that as the tenants were not provided with the required time to review this evidence, that their new evidence would not be considered in my Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on October 6, 2019, as a month to month tenancy and that rent in the amount of \$1,500.00 was to be paid by the first day of each month. The parties agreed that the Tenants paid a \$750.00 security deposit and a \$450.00 pet damage deposit during this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the tenancy ended on February 29, 2020, when the Tenants vacated the rental unit. The parties also agreed that the Tenants gave written notice to the Landlord to end their tenancy on February 15, 2020.

The Landlord is claiming for their lost rental income due to the Tenants' short notice for March 2020, in the amount of \$1,500.00 and an additional \$1,500.00 for April 2020, as the Landlord was unable to secure a new renter for the rental unit until May 1, 2020.

The Tenants argued that they had to move due to a privacy breach by the Landlord, as the Landlord had installed a security camera outside of their rental unit, with a view looking into the interior of their rental unit and had refused to take it down.

The Landlord testified that the Tenants returned the rental unit to them unclean and dirty at the end of the tenancy. The Landlord testified that they are claiming for \$404.25 for cleaning the walls, \$735.00 to patch holes in the walls, \$288.75 to have the carpets professionally cleaned and \$836.00 to buy a power washer and for their time to clean the front deck of the rental unit.

The Landlord testified that the Tenants had smoked in the rental unit, and they need to hire someone to professionally clean the walls of the rental unit to have the smoke smell removed. The Landlord testified that they are requesting the estimated amount of \$404.25 to have the walls cleaned due to smoke damage caused by the Tenants. The Landlord submitted a copy of an estimate to have the walls cleaned into documentary evidence.

The Landlord confirmed when asked by this Arbitrator that as of the date of this hearing, the walls have not been cleaned and that there is a new renter living in the rental unit. The Landlord testified that they need to be award this amount before they can afford to have the work completed.

The Tenants testified that they never smoked in the rental unit and should not have to pay this estimated amount.

The Landlord testified that the Tenants had put holes in the walls of the rental unit, and they need to hire someone to professionally repair the walls. The Landlord testified that they are requesting the estimated amount of \$735.00 to have the walls repaired due to the damage caused by the Tenants. The Landlord submitted a copy of an estimate to have the walls repaired into documentary evidence.

The Landlord confirmed when asked by this Arbitrator that as of the date of this hearing, the walls have not been patched in the rental unit. The Landlord testified that they need to be award this amount before they can afford to have the work completed.

The Tenants testified that they did not damage the walls in the rental unit and should not have to pay this estimated amount. The Tenants testified that the wall holes the Landlord is claiming were present at the beginning of the tenancy and that they only caused normal wear and tear to the rental unit during their tenancy. The Tenants submitted 24 pictures they took of the rental unit at the beginning and end of tenancy into documentary evidence.

The Landlord testified that they need to have the carpets professionally cleaned and sanitized at the end of this tenancy. The Landlord is requesting the estimated cost to have carpets cleaned and sanitized in the amount of \$288.75. The Landlord submitted a copy of an estimate to have the carpets cleaned into documentary evidence.

The Landlord confirmed when asked by this Arbitrator that as of the date of this hearing the carpets had not been professionally cleaned and that there is a new renter living in the rental unit.

The Tenants testified that the carpets were cleaned at the end of tenancy and that professional cleaning and sanitization was not required under their tenancy agreement.

The Landlord testified that they are also claiming for the forfeiture of the pet damage deposit, as the Tenants pet scratched the carpet in the rental unit. The Landlord was advised that neither the security deposit nor the pet damage deposit could be automatically forfeited. The Landlord was asked to provide proof of damage and the cost to repair that damage. The Landlord withdrew this portion of their claim during these proceedings.

The Landlord testified that the Tenants returned the rental unit without cleaning the deck and that it had cost them \$836.00 in labour and costs to buy a power washer to clean the deck.

The Tenants testified that the deck was a common area and that it is the responsibility of the Landlord to clean common areas. The Tenants testified that the Landlord freely accessed the deck, even installing a camera on the deck, proving that this was not the Tenants' private deck and that they did not have exclusive use of the deck.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month to month tenancy, without giving at least one clear rental period notice.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the agreed-upon testimony of these parties that the Tenants moved out of the rental unit, providing only 15 days written notice to the Landlord. I find that the Tenants breached section 45 of the *Act* when they failed to provide sufficient notice to end the tenancy to the Landlord before they moved out.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to

the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for March 2020. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenants' breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of rental income for March 2020, in the amount of \$1,500.00.

However, as this was a month-to-month tenancy, only one month's notice was required for this tenancy. I accept the Landlord testimony that they had been notified of the Tenants' intend to end their tenancy as of February 15, 2020. Accordingly, I find that this tenancy would have ended in accordance with the *Act* as of March 31, 2020, and that the Tenants are not responsible for any loss of rental income after the required notice period had expired. Therefore, I dismiss the Landlord claim for \$1,500.00 in lost rental income for April 2020.

As for the Landlord's claim for \$404.25 in an estimate to have the walls of the rental unit cleaned to remove the smell of smoke. During these proceedings, the parties offered conflicting verbal testimony regarding the need for this cleaning and if the Tenants had smoked in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that is the Landlord.

I have reviewed the Landlord's documentary evidence that had been submitted in accordance with the rules of procedure, and I find that there is insufficient evidence before me to show that the Tenants had smoked in the rental unit during this tenancy. Therefore, I dismiss this portion of the Landlord's claim.

As for the Landlord's claim for \$735.00 in an estimate to have the walls of the rental unit patched, during these proceedings, the parties again offered conflicting verbal testimony regarding the cause of the wall holes, and if these wall holes had been caused by these Tenants during this tenancy.

I have reviewed the Landlord's documentary evidence and compared it to the picture evidence submitted by the Tenants, and I find that the Tenants have provided sufficient and compelling evidence to satisfy me, that the several of the wall holes the Landlord is claiming for were present at the beginning of this tenancy. Additionally, based on the Tenant's evidence, I find that overall the Tenants returned the rental unit to the Landlord in a reasonable clean and undamaged state at the end of their tenancy. Accordingly, I dismiss this portion of the Landlord's claim.

As for the Landlord's claim for \$288.75 in an estimated cost to have the carpets in the rental unit professionally cleaned and sanitized at the end of tenancy. Section 37 of the Act requires that a tenant return a rental in a reasonably clean state. If a landlord wishes to require professional cleaning at the end of a tenancy, the landlord must clearly contract to that requirement in the tenancy agreement. I have reviewed the tenancy agreement signed between these parties, and I find that there is no requirement in this document for the carpet in the rental unit to be professionally cleaned at the end of this tenancy. Consequently, I dismiss this portion of the Landlord's claim.

The Landlord has claimed for \$836.00 to clean the deck at the end of this tenancy. After reviewing all the evidence submitted for these proceedings, in accordance with the rules of procedure, I find that the Tenants' provided a credible account of the Landlord's use of this deck area. I also accept the Tenants' arguments that they did not have exclusive possession of this deck during their tenancy, due to the Landlords free access to this space and the Landlords use of 24-hour surveillance of this area. I find that either this security camera was a gross violation of these Tenants' right to privacy, in an area they had exclusive possession of, or that this deck was, in fact, a common area that the Landlord had the right to observe.

Overall, I find the actions of the Landlord of installing a security camera in this deck area, to have removed any exclusive use of this area by the Tenants and to have been sufficient action to deem this area a common space. As a common space, the Tenants were not responsible for cleaning this area at the end of their tenancy. Consequently, I dismiss this portion of the Landlord's claim.

The Landlord has also claimed compensation for Canada Post fees for costs to mail documents related to these proceedings as well as Notary fees related to these proceedings. The Landlord was advised during these proceedings that with the exception of compensation for filing the Application for Dispute Resolution, the Act does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process; therefore, I dismiss the Landlord's claim to recover Canada post fees and Notary costs.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. Although the Landlord has been partially successful in their application, I decline to award the Landlord the recovery of their filing fee.

I grant the Landlord a monetary order of \$300.00, consisting of \$1,500.00 in rent for March 2020, less the \$750.00 security deposit and the \$450.00 pet damage deposit that the Landlord is holding for this tenancy.

Conclusion

I find for the Landlords pursuant to sections 67 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$300.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: November 4, 2020

Residential Tenancy Branch