



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Compensation for monetary loss or other money owed;
- Authorization to withhold the security deposit towards money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and their witness (the Witness), both of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Notice of Dispute Resolution Proceeding states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and note that neither the Landlord nor the Witness had difficulty attending the hearing on time using the information contained in the Notice of Hearing. Although the line remained open while the phone system was monitored for 52 minutes, no one called into the hearing on behalf of the Tenant.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord and Witness testified that the documentary evidence before me from the Landlord and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were personally served on the Tenant at approximately 12:30 P.M. on July 25, 2020, at an agreed upon location in the community, in the presence of both the Landlord and the Witness. As a result, I find that the Tenant was personally served with the above noted documents in accordance with the Act and the Rules of Procedure on July 25, 2020. The hearing therefore proceeded as scheduled despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to withhold the security deposit towards money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The one year fixed term tenancy agreement in the documentary evidence before me, signed on November 25, 2019, states that the one year fixed term commenced on December 1, 2019, and was set to end on December 1, 2020. The tenancy agreement states that rent in the amount of \$1,400.00 is due on the first day of each month and that a \$700.00 security deposit was paid. During the hearing the Landlord confirmed that these are the correct terms of the tenancy agreement and that they still hold the \$700.00 security deposit in trust.

The Landlord stated that on Friday July 10, 2020, they received a text from the Tenant advising them that they were ending the tenancy effective the following Monday, July 13, 2020, and that the Tenant vacated the rental unit on that date. The Landlord stated that although the Tenant promised to return to the rental unit to clean it after they vacated, and to complete the move-out condition inspection with the Landlord on July 14, 2020, they never returned to the rental unit to clean it or complete the move-out inspection.

The Landlord stated that when the Tenant vacated, they left the rental unit dirty and damaged, necessitating \$40.00 in professional cleaning costs and \$12.00 in costs to take refuse left behind by the Tenant to the dump. Although the Landlord stated that they were also required to assist with cleaning, they did not charge for this. The Landlord stated that despite the fact that the tenancy agreement prohibited pets, the Tenant had a 240 pound pet in the rental unit, and that the Tenant and their pet damaged a mattress and mattress cover provided to the Tenant. As a result, the Landlord sought \$450.00 for the cost of replacing the mattress and the mattress cover.

Photographs of the rental unit at the end of the tenancy, photographs of the stained and damaged mattress, a receipt for the purchase of the mattress shortly before the start of the tenancy in 2019, a receipt for cleaning costs, and a dump fee receipt were submitted for my consideration in support of the Landlord's testimony.

The Landlord stated that when the tenancy ended, they Tenant owed \$400.00 in outstanding rent for January 2020, \$1,400.00 for June 2020, and \$1,400.00 for July 2020. The Landlord also sought \$1,400.00 in lost rent for August 2020, as they stated that the rental unit could not be re-rented until September 1, 2020. The Landlord stated that the rental unit was posted for re-rental in July, after it was cleaned, and again in August 2020, before ultimately securing a new tenant. The Landlord stated that the rental unit has been re-rented from September 1, 2020 – November 30, 2020, at a monthly rental rate of \$1,500.00. As a result of the above, the Landlord sought \$4,600.00 in outstanding and lost rent. The Landlord also sought recovery of the \$100.00 filing fee.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration, despite the fact that the line remained open for 52 minutes and my finding earlier in this decision that the Tenant was personally served with a copy of the Application and the Notice of Hearing on July 25, 2020.

Analysis

As there is no evidence before me to the contrary, I accept as fact that the terms of the tenancy agreement are as set out in the tenancy agreement provided for my review and consideration by the Landlord.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that rent in the amount of \$3,4200.00 remained unpaid at the time the tenancy ended on July 13, 2020, and that the Tenant did not have a right under the Act to withhold or deduct this rent. As a result, I award the Landlord recovery of this unpaid rent.

Section 42(2) of the Act states that 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.

Based on the documentary evidence and testimony before me, I am satisfied that the Tenant breached section 42(2) of the Act when they ended their tenancy early on July 13, 2020, by way of written notice as the earliest date that they were entitled to end their tenancy by way of written notice under the Act and their tenancy agreement was December 1, 2020. The Landlord stated that as the rental unit was not left reasonably clean at the end of the tenancy, it could not be immediately re-rented, but an advertisement was posted in July 2020, once it was cleaned, and again in August 2020, and that it was ultimately re-rented under a three month fixed term tenancy agreement with a monthly rent amount of \$1,500.00, effective September 1, 2020. Based on the

above, I am satisfied that the Landlord acted reasonably to mitigate the loss of rent by having it cleaned and posted for re-rental as soon as possible at a reasonably economic rental rate.

Although the Landlord sought \$1,400.00 in lost rent for August 2020, the rental unit was re-rented for the balance of the Tenant's fixed term at an increased rental rate of \$1,500.00 per month. As a result, and pursuant to Residential Tenancy Policy Guideline (the Policy Guideline) 3, I find that the Landlord only suffered a loss in rent for the balance of the Tenant's fixed term of \$1,100.00, as they are gaining \$300.00 over the balance of the remaining fixed term of the tenancy agreement due to the increase in rent. I therefore award the Landlord only \$1,100.00 in lost rent for the balance of the fixed-term of the tenancy agreement.

The Landlord also stated that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy, necessitating \$40.00 in cleaning costs and \$12.00 in dump fees, and that the Tenant and their unauthorized pet damaged a mattress and mattress cover worth \$450.00. Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on the Landlord's uncontested and affirmed testimony and the documentary evidence before me, I am satisfied that the Tenant breached section 37(2)(a) of the Act by failing to leave the rental unit clean at the end of the Tenancy and by damaging a mattress and mattress cover provided to them by the Landlord during the course of the tenancy in such a way that it cannot be considered reasonable wear and tear. I am also satisfied that the Landlord suffered a loss in the amount of \$502.00 as a result, and that the Landlord acted reasonably to mitigate their loss by having the rental unit cleaned at a reasonably economic rate, by failing to claim compensation for their own cleaning time, and by seeking only the replacement cost of mattress and mattress cover damaged by the Tenant and their unauthorized pet, which I find to be reasonable.

Based on the above, I therefore award the Landlord recovery of \$502.00 for cleaning costs and replacement of a mattress and mattress cover. As the Landlord was successful in their claim, I also award them recovery of the \$100.00 filing fee, pursuant to section 72(1) of the Act.

As the Landlord stated that the Tenant has refused to provide a forwarding address, I find that the requirement for the Landlord to deal with the security deposit in accordance with section 38(1) of the Act has not yet been triggered. As a result, and based on the Landlord's request, I therefore grant the Landlord authorization to retain the Tenant's

\$700.00 security deposit, in full, towards the above noted amounts owed pursuant to section 72(2)(b) of the Act.

Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$4,902.00.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$4,902.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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. The Tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord.

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 10, 2020

Residential Tenancy Branch