



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 in response to an Application for Dispute Resolution filed by the Landlords on August 03, 2020 (the “Application”). The Landlords sought to recover unpaid rent, to keep the security deposit and to recover the filing fee.

The Landlord appeared at the hearing with the Agent who acted for the Landlords in relation to this tenancy. The Landlord appeared for Landlord S.U. The Tenant appeared at the hearing and appeared for Tenant C.W. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2019 and was for a fixed term ending July 31, 2020. Rent was \$4,000.00 per month due on the first day of each month. The Tenants paid a \$2,000.00 security deposit.

The parties agreed the Tenants moved out of the rental unit June 30, 2020.

The Tenant testified that the Landlords had the Tenants' previous address and were told via text in early June that the Tenants would be moving back to their previous address. The Agent testified that she received a text June 30, 2020 from the Tenants about moving back to their previous address, which the Landlords had.

The Agent testified that the Landlords did not have an outstanding Monetary Order against the Tenants at the end of the tenancy. The Agent testified that the Tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

The parties agreed they did a move-in inspection, but no Condition Inspection Report was completed. The parties agreed no move-out inspection was done with both parties present and the Tenants were not offered two opportunities to do a move-out inspection.

The Agent testified that the Landlords received \$500.00 from BC Housing for April to August rent for the Tenants. The Agent testified that the \$500.00 for August has to be sent back. The Agent testified that, considering these payments, the following rent is outstanding:

- \$1,500.00 for April;
- \$1,500.00 for May; and
- \$3,500.00 for June.

The Agent confirmed \$6,500.00 in rent is currently outstanding.

The Tenant agreed with the outstanding rent amounts outlined above and agreed \$6,500.00 in rent is outstanding for April to June 2020. The Tenant acknowledged the Tenants did not have authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

The Tenants had submitted a written document raising the following issues in relation to rent owing:

- Furniture was left at the rental unit which the Landlords could have sold;
- \$121.00 should be deducted for utilities; and
- The \$2,000.00 security deposit with interest is \$2,055.00.

At the hearing, the Tenant testified that the Agent was going to come look at the furniture left in the rental unit and agree on a price for it but that the Agent never did come and look at the furniture.

The Tenant explained that utilities were in her name, she paid the bills and had to collect a portion of the amount from the downstairs tenants. The Tenant testified that she paid the June bill, the downstairs tenants were supposed to pay her \$121.00 but paid the Landlords \$121.00.

The Tenant did not dispute that the Landlords have to return the \$500.00 for August rent to BC Housing.

The Agent replied as follows. She never got a chance to look at the furniture prior to the Tenants moving out. When she did attend the rental unit, the Tenants had left furniture that they could not sell. She tried to sell the furniture but was not successful. It cost \$350.00 to move the furniture and it was sold for \$555.00. The Agent agreed \$205.00 could be taken off the rent amount owing based on the furniture.

The Agent testified that the downstairs tenants did pay the Landlords for utilities but only for the period after the Tenants moved out and not for June.

The Landlords sought loss of rent for July. The Agent testified as follows. The Tenants sent a text June 24, 2020 saying they were trying to move for July 10, 2020. The Tenants sent a text June 30, 2020 saying they had moved out. The Landlords put the house on the market and listed it for rent on a rental website within a week or so of the Tenants moving. The rental unit was listed for the same rent amount. The Landlords did not get new tenants until August 15, 2020.

The Tenant testified as follows. The situation was a result of circumstances beyond her control. Half of the rent was paid by others living in the rental unit but then the pandemic occurred. The Tenants did let the Landlords know they were having

difficulties. She agrees the Tenants owe this money. The Tenants let the Landlords know they would be moving in the third week of June.

Analysis

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

The parties agreed about move-in and move-out inspections and, based on their testimony, I am satisfied the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit.

Based on the testimony of both parties, I accept that the Tenants moved out June 30, 2020. I find the tenancy ended June 30, 2020 pursuant to section 44(1)(d) of the *Act*. Based on the testimony of both parties, I accept that the Landlords had the Tenants’ forwarding address in June. According to the Agent, the Landlords had the Tenants’ forwarding address June 30, 2020.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from June 30, 2020 to repay the security deposit or file an Application for Dispute Resolution claiming against the deposit. The Application was filed August 03, 2020, outside the 15-day time limit.

There are exceptions to section 38(1) of the *Act* in sections 38(2) to (4) of the *Act*; however, based on my finding above and the testimony of the Agent, I am not satisfied these sections apply.

Section 38(6) of the *Act* states:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlords did not comply with section 38(1) of the *Act* and therefore must pay the Tenants double the security deposit, being \$4,000.00.

The Landlords are still entitled to seek compensation and I consider that now.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

I am satisfied based on the written tenancy agreement that rent was \$4,000.00 per month due on the first day of each month during the tenancy. This was not at issue.

I am satisfied the Tenants did not pay \$6,500.00 of rent for April to June of 2020 as the parties agreed on this.

I am satisfied the Tenants did not have authority under the *Act* to withhold rent as the Tenant acknowledged this.

In relation to the furniture issue, I am not satisfied there was a final agreement between the parties about what the Landlords or Agent would agree to purchase and for what price. I am not satisfied the rent amount owing should be reduced due to the furniture left in the rental unit.

I told the parties at the hearing it was open to the Landlords to agree to an amount being deducted from the rent owing based on the furniture if the Landlords wished to do so. The Agent agreed to \$205.00 being deducted from the rent amount owing and, on this basis, I reduce the amount owing by \$205.00.

The parties disagreed about the utilities issue. I am not satisfied \$121.00 should be deducted from the rent amount owing due to utilities because section 26 of the *Act* does not allow for rent to be reduced due to other monies owing. If the Landlords owe the Tenant \$121.00, the proper course of action is for the Tenants to seek this compensation by filing an Application for Dispute Resolution.

As explained to the Tenant during the hearing, the amount of interest owed on security deposits has been 0% since 2009 and therefore no interest is owed on the security deposit.

Given the above, I am satisfied the Tenants owe the Landlords \$6,295.00 in unpaid rent.

In relation to loss of rent for July, there is no issue that this was a fixed term tenancy ending July 31, 2020. I am satisfied the Tenants moved out prior to the end of the fixed term as the parties agreed on this. I am satisfied the Tenants breached the tenancy agreement and section 45(2) of the *Act* in this regard.

I am satisfied based on the testimony of the Agent that the Landlords did not re-rent the unit until August 15, 2020. I did not understand the Tenant to dispute this. Therefore, I am satisfied the Landlords lost July rent.

I am satisfied based on the testimony of the Agent that the Landlords tried to re-rent the unit by listing it on a rental website within a week or so of the Tenants moving for the same rent amount. I did not understand the Tenant to dispute this. Therefore, I am satisfied the Landlords took reasonable steps to mitigate their loss.

I am satisfied the Tenants owe the Landlords July rent. I understand from the Monetary Order Worksheet that the Landlords are seeking \$3,500.00 for July. I award the Landlords this amount.

As the Landlords were successful in the Application, I award the Landlords \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$9,895.00. Given the Landlords owe the Tenants double the security deposit, I consider the Landlords to hold \$4,000.00 as a security deposit. The Landlords can keep this \$4,000.00 pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$5,895.00 pursuant to section 67 of the *Act*.

I acknowledge that the above includes “affected rent” as that term is defined in the *Covid-19 (Residential Tenancy Act And Manufactured Home Park Tenancy Act) (No. 3) Regulation*. I acknowledge that “affected rent” is subject to a repayment plan if a landlord seeks to end a tenancy for unpaid “affected rent”. However, here, the tenancy has ended and therefore the Landlords are entitled to recover all outstanding rent.

Conclusion

The Landlords are entitled to monetary compensation in the amount of \$9,895.00. The Landlords are considered to hold a \$4,000.00 security deposit. The Landlords can keep this \$4,000.00. The Landlords are issued a Monetary Order for the remaining \$5,895.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 26, 2020

Residential Tenancy Branch