



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on October 1, 2019 and ended on June 30, 2020. The tenant was obligated to pay \$2160.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1080.00 security deposit which the landlord still holds. Written condition inspection reports were conducted at move in and move out. The landlord testified that the tenant left the unit with numerous

“patch marks” that required some repainting. The landlord testified that the painting was completed sometime in August at a cost of around \$1000.00. The landlord testified that he had a friend do it for him for cash payment. The landlord testified that due to the condition of the unit and because of COVID – 19 he was unable to rent the unit until September. The landlord testified that the tenant agreed and signed to forfeit his deposit at the move out condition inspection to cover the costs of the painting.

The tenant gave the following testimony. The tenant testified that he felt bullied into signing the move out condition inspection report. The tenant testified that he admits that he made a mistake about patching the walls and incorrectly matching the paint but submits that the matter could have been easily resolved if the landlord was more reasonable. The tenant testified that he wasn't given a chance after the tenancy ended to return to the unit and rectify the situation.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Rent Loss

I find that the landlord and tenant entered into a fixed term tenancy for the period from October 1, 2019 to June 30, 2020. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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.*

The above provision states that tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenant ended the tenancy on June 30, 2020, prior to the end of the fixed term on September 30, 2020. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for July and August 2020 rent loss of \$4320.00, without leave to reapply. The landlord provided a copy of rental advertisements for the unit. However, the landlord was attempting to get a higher monthly rent of \$2300.00. The landlord did not provide sufficient evidence to show that he mitigated the loss such as providing flexible move in dates, flexible tenancy terms such as a shorter fixed term or asking a similar or lower rent. In addition, the landlord had not conducted the painting until August. I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

Painting , Security Deposit & Filing Fee

The tenant alleges that he signed off at the move in the condition inspection allowing the landlord to retain the deposit under duress. The tenant failed to provide sufficient evidence to support this claim. In the tenants own testimony he acknowledged and confirmed that he had "made a mistake" in patching and painting the walls inadequately. The landlord submits that he had to repaint portions of the unit and that the deposit was used for that purpose. As the tenant failed to provide sufficient evidence that he signed

under duress, and that he admitted he caused the damage, I find that the deposit was signed over to the landlord willingly and in good faith. Furthermore, I find that the amount of the deposit adequately covers the cost of painting and the filing fee and that no further compensation is required.

Conclusion

The landlord is entitled to retain the deposit, no further compensation is required.

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 05, 2020

Residential Tenancy Branch