



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LTE VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

On August 15, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.C. and L.T. attended the hearing as agents for the Landlord. The Tenant also attended the hearing. All parties in attendance provided a solemn affirmation.

L.C. advised that the Notice of Hearing evidence package was served to the Tenant by registered mail on August 21, 2020 and the Tenant confirmed that he received this package. Based on this undisputed testimony, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. As such, the Landlord’s evidence will be accepted and considered when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by regular mail on November 15, 2020. L.C. confirmed that the Landlord received this evidence. As such, the Tenant’s evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on March 1, 2019 as a fixed term tenancy ending on February 29, 2020. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on July 31, 2020. Rent was established at \$1,209.65 per month and was due on the first day of each month. A security deposit of \$589.00 and a \$50.00 key deposit were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on February 1, 2016 and that a move-out inspection report was conducted on July 31, 2020. As well, they agreed that the Tenant provided his forwarding address in writing on the move-out inspection report that was completed on July 31, 2020.

L.C. advised that the Landlord is seeking compensation in the amount of **\$1,249.65** because the Tenant did not end the tenancy in accordance with the *Act*. This amount was broken down as \$1,209.65 for August 2020 rent and \$40.00 of the parking fee for August 2020. She stated that the Tenant emailed on June 29, 2020 asking how to give his notice to end the tenancy, and there was no indication in this email of when he intended to end it. She emailed him back with the Residential Tenancy Branch links on ending a tenancy and that he could drop off his written notice in the mailbox of the office, as one of the permitted methods of service pursuant to the *Act*. She stated that he dropped off this notice in the mailbox on June 30, 2020 and emailed his notice on the same day. However, the Landlord did not receive the email until July 1, 2020 and received the written notice on July 2, 2020. She submitted that L.T. went to the office to collect any mail on June 30, 2020 but the Tenant's notice was not there at that time.

The Tenant advised that he called L.T. on June 29, 2020 to ask him how to end the tenancy. He asked L.T. if he could drop off his notice to end tenancy and email the Landlord as well. L.T. advised him that this was fine and to email the Landlord's office directly. He stated that the Landlord's office indicated it was fine to email his notice to end the tenancy; however, he provided no evidence of this. He stated that the Landlord

knew when he would be ending the tenancy, and they accepted his notice for this date. It is his position that having to serve a notice to end his tenancy in person on or before June 30, 2020 to be effective for July 31, 2020 was unreasonable given the COVID pandemic.

He submitted that the Landlord emailed him about potential viewings for the rental unit; however, it was his belief due to the pandemic that viewings should not be done. Furthermore, the Landlord's email communication to schedule these viewings did not comply with the *Act* in terms of providing the appropriate notice. He stated that the Landlord only had a problem with the effective date of his notice when he declined their requests for viewings.

He advised that the Landlord could not re-rent the unit because it was advertised for an increased amount of rent, and the Landlord did not adequately mitigate any losses. Furthermore, by attempting to re-rent for a higher amount, this would be considered betterment. Moreover, the Landlord forgot to change the vacancy sign in front of the building until he reminded them of this. He referenced the Landlord's evidence of prospective tenants, and he noted that a majority of the viewings happened after the Landlord reduced the rent.

L.C. advised that the Landlord had four requests to view the rental unit at \$1,450.00 per month and that the first prospective tenant contacted the Landlord on July 5, 2020 asking to view the rental unit the next day. As a viewing could not be scheduled until July 9, 2020, this tenant cancelled their request. There was another viewing scheduled with a different tenant for July 9, 2020; however, this could not be conducted as the Tenant would not allow this to happen. The Landlord had a third prospective tenant interested in the rental unit, but when the Landlord called the Tenant on July 10, 2020, he did not grant access. Finally, there was a fourth applicant on July 10, 2020, but this person was declined. She stated that she emailed the Tenant on July 11 or 12, 2020 asking him to work with her regarding viewings in an effort to re-rent the unit, and she reminded him that he could be responsible for August 2020 rent. She referenced the email submitted as documentary evidence to support this position.

She stated that she lowered the rent on July 13, 2020 and the Landlord received three more applicants, but they wanted the rental unit for September 1, 2020. She testified that the Landlord handled over 300 requests for the rental unit, in the form of phone calls and inquiries, and 27 viewings were scheduled; however, most were cancelled due to the Tenant. She acknowledged that there was a delay in changing the vacancy sign

in front the building, but this was fixed immediately when informed and there was only one walk-by applicant anyways.

Regarding the Tenant's submissions with respect to betterment, she cited Policy Guideline # 3 where it stated that if the Landlord rents for a higher amount of rent, this would not be considered betterment and the difference would be set off against the original amount of rent owing. She stated that the advertised amount of rent was for market rent.

L.C. advised that the Landlord is also seeking compensation in the amount of **\$25.00** because the Tenant did not clean the rental unit thoroughly and **\$101.00** because the Tenant did not clean the drapes at the end of tenancy. She stated that she emailed the Tenant on July 6, 2020 advising him that the rental unit must be cleaned, but the light fixtures were left greasy at the end of tenancy. This was documented on the move-out inspection report and the cleaning cost represents the minimum charge for one hour of work. In addition, the Tenant agreed to this deduction on the move-out inspection report.

With respect to the drapes, she stated that L.T. emailed the Tenant on July 24, 2020 and gave him options of costs for having the drapes cleaned himself or the costs for having the Landlord clean the drapes. According to the move-in inspection report, the drapes were clean at the start of the tenancy and the tenancy agreement required the Tenant to have them cleaned at the end of the tenancy. An invoice was submitted to support the cost of this cleaning and the Tenant agreed to this deduction on the move-out inspection report.

The Tenant agreed that he authorized that the Landlord could deduct \$126.00 from the security deposit when he signed the move-out inspection report.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with

Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on July 31, 2020. As the tenancy also ended on this date, I find that this was the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The evidence before me is that the Landlord made this Application to claim against the deposit on August 15, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

Section 67 of the *Act* allows for compensation to be awarded to a party if damage or loss results from a party not complying with the *Act*, the *Residential Tenancy Regulations*, or a tenancy agreement. Furthermore, an Arbitrator may determine this amount and may Order that party to pay compensation to the other party.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into the most current fixed-term tenancy agreement for a year starting on March 1, 2019 and ending on February 29, 2020. The tenancy then transitioned into a month-to-month tenancy and effectively ended when Tenant gave up vacant possession of the rental unit on July 31, 2020.

Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlord receives the notice, and 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."

Section 88 of the *Act* outlines the following methods the Tenant had at his disposal to serve his notice to end tenancy to the Landlord:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 52 of the *Act* outlines the form and content of a notice to end tenancy, as follows:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and (e) when given by a landlord, be in the approved form.

Furthermore, Section 53 of the *Act* states the following:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than 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 effective date is deemed to be 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
- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

As this was a month-to-month tenancy, the Tenant was required to give one, whole month's written notice to end his tenancy, and this notice must have been served to the Landlord in accordance with the *Act*. Furthermore, for this Notice to be effective for July 31, 2020, the Landlord must have received this notice in writing on or before June 30, 2020. While the Tenant claims to have emailed his notice prior to July 1, 2020 and that the Landlord had accepted this, I find it important to note that the Landlord submitted a copy of an email dated June 30, 2020 where the Tenant stated, "This is my first time ending a tenancy. How do we proceed from here?"

Furthermore, the Tenant submitted an email dated June 29, 2020 stating, "I wanted to know about ending my tenancy, and how I can go about providing you proper notice." On June 29, 2020, the Landlord emailed the Tenant in response, providing internet links

to the Residential Tenancy Branch website regarding how the Tenant could end the tenancy pursuant to the *Act*.

The Tenant is attempting to rely on the Landlord's email dated July 6, 2020 to support his position that the Landlord received the Tenant's notice on or before June 30, 2020. While this email confirms that the notice was received by the Landlord and that the effective end date of the tenancy was August 1, 2020, I do not find that this email confirms that the Landlord received the Tenant's notice on or before June 30, 2020. If the Landlord had truly accepted the service of the Tenant's notice by email on or before June 30, 2020, it does not make sense to me why an email providing links on how to end a tenancy in accordance with the *Act* would have been sent to the Tenant on June 29, 2020.

Given this, I now refer to Section 53 of the *Act*. This Section of the *Act* notes that any incorrect effective date will automatically self-correct. As I am satisfied that the Tenant's notice was, more likely than not, received in July 2020, the effective end date of the tenancy would have automatically self-corrected to August 31, 2020. Based on this, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 53 of the *Act*.

Moreover, even though the Tenant vacated prior to the effective end date of the tenancy, I find that the Tenant would still be responsible for August 2020 rent. While I acknowledge that the Landlord made attempts to re-rent the unit for August 2020, there was no obligation to as the Tenant would have still been responsible for this month's rent as he provided late notice to end the month-to-month tenancy.

While the Tenant relies on Policy Guideline # 5 regarding the Landlord's duty to mitigate loss, I find it important to note that I am not bound to follow or make a Decision based on these guidelines. Furthermore, the excerpt that the Tenant chooses to rely on pertains to a tenancy where the tenant ends a fixed term tenancy early, which is not the case here. As I am not satisfied that the Tenant provided one, whole month's notice to end tenancy, I grant the Landlords a monetary award in the amount of **\$1209.65** to remedy this debt. However, I decline to award the \$40.00 parking fee to the Landlord.

With respect to the Landlord's request for compensation in the amount of \$25.00 for general cleaning and \$101.00 for cleaning of the drapes, the undisputed evidence is that the Tenant provided written authorization to the Landlord to retain **\$126.00** from the security deposit. As such, I am satisfied that the Landlord may apply a portion of the security deposit to apply to this debt.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and key deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a monetary award as follows:

Calculation of Monetary Order Payable by the Tenant to the Landlord

Rental loss for August 2020	\$1,209.65
General cleaning	\$25.00
Drape cleaning	\$101.00
Recovery of filing fee	\$100.00
Security deposit	-\$589.00
Key fob deposit	-\$50.00
TOTAL MONETARY AWARD	\$796.65

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$796.65** 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.

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: December 16, 2020

Residential Tenancy Branch