



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on December 4, 2020 by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and all evidentiary material (the Hearing Package) by registered mail on October 29, 2020 and was permitted to provide proof of such service after the hearing concluded. I now have a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 1, 2019 and was to expire on October 31, 2020, thereafter reverting to a month-to-month tenancy, however on September 21, 2020 the tenant dropped off the keys to the

landlord's office and left. Rent in the amount of \$1,825.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$912.50 and \$62.50 was returned to the tenant on October 7, 2020. The balance of \$850.00 is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenant ledger has been provided for this hearing. The rental unit is an apartment in a complex containing 255 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant provided the landlord's agents with a notice to end the tenancy, and a copy has been provided for this hearing. It is dated September 4, 2020 and contains an effective date of vacancy of September 30, 2020. It also contains the tenant's forwarding address.

The tenant's rent cheque for September, 2020 was returned for insufficient funds. The landlord claims \$1,825.00 for unpaid rent and \$25.00 for the NSF administrative fee, which is contained in the tenancy agreement.

The landlord also claims Liquidated Damages for the tenant ending the tenancy earlier than the fixed-term. At the time that the tenant dropped off the keys, the landlord's agent was not there but was told by colleagues that the tenant was reminded that she was breaking the lease and was fully aware that Liquidated Damages would be posted to the tenant's ledger account.

The tenant was also told that the rental unit had to be in the same state of repair as when moving in. Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, however the tenant did not attend for the move-out portion and the landlord's agent completed it in the absence of the tenant. The tenant did not leave the rental unit reasonably clean, and photographs have been provided as evidence for this hearing which the landlord's agent testified were taken during the move-out condition inspection on September 29, 2020. The landlord did not provide the tenant with at least 2 opportunities to complete the move-out inspection, and the landlord testified that when dropping off the keys, the tenant was in distress and didn't want to talk to the landlord's agents. The landlord's agent couldn't communicate with the tenant because the tenant wouldn't answer the phone.

The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit, and the rental unit has not been re-rented. Due to COVID-19 the landlord only claims unpaid rent for the month that the tenant occupied the rental unit.

The landlord has also provided an Invoice for painting and \$240.00 for cleaning, however the landlord only claims \$200.00 for cleaning as well as \$1,825.00 for unpaid rent for September, 2020, \$25.00 for the N.S.F. fee, \$500.00 liquidated Damages, and recovery of the \$100.00 filing fee.

Analysis

I have reviewed the tenancy agreement and I find that it specifies a \$25.00 administrative fee for returned cheques and \$500.00 for Liquidated Damages if the tenant ends the tenancy prior to the end of the fixed term. The fixed-term expired on October 31, 2020 but the tenant vacated in September, without paying rent for September, and I find that the landlord has established claims of **\$1,825.00** for September, 2020 rent, **\$25.00** for the N.S.F. fee and **\$500.00** for Liquidated Damages.

The landlord retains the right to claim against the security deposit for unpaid rent, however, because the landlord did not offer the tenant at least 2 opportunities to complete the move-out condition inspection report, the landlord's right to claim against the security deposit for damages is extinguished. However, the landlord's right to claim for damages is not extinguished.

The landlord's Application for Dispute Resolution claims unpaid rent, however all of the landlord's evidence was provided for this hearing with the Application, and I accept the undisputed testimony of the landlord's agent that all evidence was provided to the tenant in the Hearing Package. Therefore, I accept that the tenant has been put on notice that the landlord also claims damages for cleaning costs. I have reviewed the condition inspection report and the landlord's photographs, and I am satisfied that given the amount of furniture and other items left behind by the tenant, the landlord has established the **\$200.00** claim.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the **\$100.00** filing fee.

A landlord is required to return a security deposit or pet damage deposit or both within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period. If the landlord fails to do either within that 15 day period, the landlord must repay double the amount. In this case, I find that the landlord received the tenant's forwarding address in writing on September 4, 2020, and the tenancy ended on September 30, 2020. The landlord made the Application for Dispute Resolution on October 22, 2020, which is beyond the 15 day period.

The landlord's agent also testified that the sum of \$62.50 was returned to the tenant from the security deposit held in trust, and the landlord holds \$850.00.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set off, which states, in part (underlining added):

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit. unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴.

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act¹⁶;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

Given that the landlord has not made the application within 15 days of the date the tenancy ended, I must order double the deposit, or \$1,825.00. The landlord has repaid

\$62.50 of that amount to the tenant, and I find that the landlord currently effectively holds \$1,762.50 in trust ($\$912.50 \times 2 = \$1,825.00 - \$62.50 = \$1,762.50$).

Having found that the landlord has established the claims totaling \$2,650.00, and the landlord has returned \$62.50 of the security deposit to the tenant, I set-off the security deposit of \$1,762.50 and I grant a monetary order in favour of the landlord for the difference in the amount of **\$887.50** ($\$1,825.00$ September rent + $\$25.00$ N.S.F. fee + $\$500.00$ Liquidated Damages + $\$200.00$ cleaning fee + $\$100.00$ filing fee = $\$2,650.00 - \$1,762.50$ security deposit = $\$887.50$).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit held in trust, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$887.50**.

This order is final and binding and may be enforced.

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 08, 2020

Residential Tenancy Branch