



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL
 MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on September 4, 2020. The Landlord applied for a monetary order unpaid rent, permission to retain the security deposit and to recover their filing fee.

The Tenant’s Application for Dispute Resolution was made on November 8, 2020. The Tenants applied for the return of their security deposit and the return of their filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?
- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the filing fee for this application?

Preliminary Matters – Named Parties Removed

During these proceedings, it was noted that four Respondents were listed on the Landlord's application, but there was only one Tenant recorded on the tenancy agreement.

The Parties agreed that only one Tenant had not signed the tenancy agreement and that the only three parties listed in the Landlord's claim were occupants under this tenancy.

I find it appropriate to remove the three other parties listed as respondents to the Landlord's claim, as they are not signatories to the tenancy agreement before me in these proceedings.

Background and Evidence

The tenancy agreement shows that the tenancy began on September 1, 2020, as a one-year fixed term tenancy that would have rolled into a month-to-month tenancy at the end of the initial fixed term. Rent was set in the amount of \$2,400.00 per month and was to be paid by the first day of each month. The tenancy agreement recorded that the Landlord had been given a \$1,200.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenant took possession of the rental unit at 5:00 p.m. on August 31, 2020, and that the keys were returned to the Landlord during a 5:00 p.m. meeting on September 1, 2020.

The Landlord testified that the previous renter had moved out at 3:00 p.m. on August 31, 2020, and this Tenant had requested to take possession of the rental unit early.

The Tenant testified that they had requested the keys to the rental unit early.

The Landlord testified that during the September 1, 2020, meeting, the Tenant expressed that they were not happy with the condition of the rental unit, that it had not been cleaned to their satisfaction, and there was mould on windows and a water stain on the wall. The Landlord testified that due to the quick flip of this rental unit, they were not able to have it professionally cleaned before this Tenant moved in, but that they felt the rental unit had been reasonably cleaned for this tenancy. The Landlord testified that they offered to have a professional cleaner come in and address anything that was unsatisfactory to the Tenant.

The Tenant's testified that they believed that the rental unit was not move-in ready, which was a material breach of their tenancy agreement and that the presence of mould and water stains was a breach of the Act. The Tenants testified that due to these breaches of the Act, they decided not to move in, that they were not responsible for the September 2020 rent and should be given their security deposit back.

The parties agreed that the September 2020 rent was not paid for this tenancy. The Landlord requested the recovery of the unpaid rent for September 2020 for this tenancy.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for September 2020. I find that the Tenant breached section 26 of the Act when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$2,400.00 in the unpaid rent for September 2020 rent. I grant permission to the Landlord to keep the \$1,200.00 security deposit for this tenancy in partial satisfaction of this award.

I acknowledge the Tenant's argument that when they took possession of the rental unit on August 31, 2020, the rental unit had not been cleaned to their standards, and there was mould on some of the windows and a water stain on the wall. However, I find that the need for additional cleaning and the presents of some mould to be insufficient cause to have frustrated this contract. The need for additional cleaning and the removal of mould can be reasonably dealt with during a tenancy and are insufficient cause to invalidate a tenancy agreement.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlords a monetary order of \$1,300.00, consisting of \$2400.00 in rent for September 2020, \$100.00 in the recovery of the filing fee for this hearing, less the \$1,200.00 security deposit they are holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,300.00**. 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.

I dismiss the Tenant's claim in its entirety.

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