



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by an un-named landlord seeking a monetary order for unpaid rent and utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

A person attended the hearing identifying herself as an agent for a property management company, and agent for the landlord. The landlord's agent also indicated who the landlord is, which is not contained in the Application for Dispute Resolution. I amended the application to show who the landlord is, and the frontal page of this Decision reflects that amendment.

The landlord's agent 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's agent testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and evidence (the Hearing Package) by email on October 31, 2020, as well as a substitutional service Decision made by the Residential Tenancy Branch on, October 30, 2020. A copy of the Decision has been provided for this hearing, which permits the landlord to serve the tenant with the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of the substituted service Decision to the tenant's email address, and are deemed sufficiently served 3 days after sending the email to the tenant. The landlord has provided a copy of a Word document specifying some documentation, and was permitted to provide further proof of service after the hearing had concluded. I now have a video of the email with all

attachments, and I am satisfied that the landlord has established that the tenant has been served in accordance with the substitutional service order made on October 30, 2020.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for cleaning costs?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2020 and expired on August 31, 2020. A copy of the tenancy agreement has been provided for this hearing, which specifies that at the end of the fixed term the tenant must vacate the rental unit "for owner occupancy." The landlord's agent is not certain but believes the tenant vacated sometime in May or June, 2020.

Rent in the amount of \$2,700.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1,350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family house.

The landlord's agent further testified that the tenant fell into arrears, which currently amount to \$9,726.27. A copy of a tenant ledger has been provided for this hearing, and the landlord's agent testified that the owner offered to compensate the tenant, applying \$1,000.00 to the ledger arrears if the tenant was willing to make a Repayment Plan for arrears, but the tenant refused to do that. At that point, the tenant was already in arrears \$5,050.00. The ledger also shows that as of August 1, 2020 the tenant was in arrears of rent the sum of \$11,076.27, including August rent, and less the \$1,350.00 security deposit, the tenant still owes \$9,726.27, which includes utility bills of \$206.29 and \$119.98.

Neither party gave notice to end the tenancy. The landlord's agent visited the rental unit in April, 2020 and discovered that other people were living there as well as a cat. It was during the spring COVID-19 period, so the landlord decided to be fair. In May, the landlord's agent couldn't get ahold of the tenant, and inspected the rental unit at the end of May and found 7 people living there. The place was pretty much trashed, and the tenant moved to Alberta, saying she was returning.

However, in June, 2020 the tenant admitted that she wasn't coming back, but the 7 people there wouldn't leave. During subsequent property visits, the occupants were asked to leave and they finally tricked out and thankfully they left.

The tenant did not pay for utilities, and the tenancy agreement specifies that water, electricity, heat and gas are included. However, the landlord's agent testified that the Addendum, which I cannot read specifies that: "Utilities included in rental amount unless they go over 10% above and beyond the average monthly rate over the past 2 years." The landlord's agent testified that the bills did go above that amount, but copies have not been provided for this hearing.

The landlord has also provided a list of missing/damaged items with dollar amounts beside totaling \$2,600.00, but no receipts or proof of their actual cost.

The landlord also claims cleaning costs of \$35.00 per hour for 54 hours, totaling \$1,890.00.

Analysis

Firstly, a tenancy agreement must not contain a term that at the end of a fixed term the tenant must move out of the rental unit, and where it does, it is not enforceable.

I have reviewed all of the evidentiary material of the landlord, and absent any utility bills I am not satisfied that the landlord has established the claims of \$206.29 or \$119.98.

The landlord's agent testified that in June, 2020 the tenant advised that she was not returning to the rental unit but 7 other people were there and slowly trickled out. The landlord's agent did not specify when the rental unit was re-rented or when the rental unit was vacated. In order to be successful in a claim for unpaid rent to the end of the fixed term, the landlord is required to establish mitigation. Any notice that the tenant could have given at that time, even in a month-to-month tenancy, would not have been effective until the end of July, 2020. However, the landlord has not provided any evidence of when the

rental unit became vacant or how or when the landlord advertised to mitigate any loss of rental revenue for August.

I accept the tenant ledger provided by the landlord, and I am satisfied that the landlord has established a monetary claim for unpaid rent as follows:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	OUTSTANDING
March 1, 2020	Rent due/paid	\$2,700.00	\$2,700.00	\$0
April 1, 2020	Rent due/paid	\$2,700.00	\$350.00	\$2,350.00
May 1, 2020	Rent due/paid	\$2,700.00	\$2,400.00	\$2,650.00
June 1, 2020	Rent due/paid	\$2,700.00	\$0	\$5,350.00
July 1, 2020	Rent due/paid	\$2,700.00	\$0	\$8,050.00

I find that the landlord has established a monetary claim for unpaid rent in the amount of **\$8,050.00**.

Where a party makes a claim for damages, the claiming party must prove the monetary losses. The ball-park figures listed in the landlord's "Missing/Damaged Items List" are not supported by any evidence, and I dismiss that claim. Further, there is no evidence to substantiate the \$1,890.00 claim for cleaning at \$35.00 per hour or for 54 hours, and I dismiss that portion of the landlord's claim.

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

Having found that the landlord has established a claim of \$8,050.00 for unpaid rent and recovery of the \$100.00 filing fee, I order the landlord to keep the \$1,350.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference of \$6,800.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,350.00 security deposit in partial satisfaction of the claim 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 **\$6,800.00**.

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: January 25, 2021

Residential Tenancy Branch