



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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement with a different landlord sets out a tenancy start date of June 1, 2017. At the outset of the tenancy \$1,175.00 was collected as a security deposit. The Landlord purchased the unit on or about December 2018. Rent of \$2,408.00 was payable on the first day of each month. Tenants ME and RK are not named as tenants on the tenancy agreement but were occupants of the unit. A company “DPL” is the only named tenant. There is no move-in report.

The Landlord states that on May 6, 2020 the Tenant gave notice to end the tenancy for May 15, 2020 and subsequently moved out of the unit and returned the keys on June 16, 2020. The Landlord states that the Tenant failed to pay \$1,204.00 for April 2020, \$1,204.00 for May 2020 and \$2,350.00 for June 2020. The Landlord claims \$4,758.00. The Tenant does not dispute that it only paid \$1,204.00 for April 2020 rent. The Tenant states that it moved out of the unit and returned the keys on May 15, 2020. The Tenant argues that since it moved out of the unit on May 15, 2020 and paid rent to that date it does not owe rent for the remainder of May or for June 2020.

The Landlord states that its agent completed the walkthrough inspection with the Tenant on June 16, 2020. The Landlord provides a copy of an email dated June 16, 2020 from the agent as supporting evidence of the move-out date, inspection and report of the condition of the unit. It is noted that the email sets out the unit being in a "clean and good condition". The Landlord does not know whether the Tenant was provided a copy. The Landlord states that the agent had to clean the unit before the next tenants moved in and claims the cost of \$205.76. The Tenant states that the unit was left reasonably clean.

The Landlord states that it incurred the costs of an agent to re-rent the unit and claims those costs of \$1,312.50. The Landlord argues that since the Tenant gave short notice, they are responsible for the Landlord's costs to obtain an agent to re-rent the unit. The Landlord states that after May 6, 2020 the unit was advertised for rent of \$2,700.00 on its agent's website. The Landlord does not know when the unit was advertised as being available. The Landlord states that the unit was re-rented for a tenancy start date of July 1, 2020 with \$2,500.00 payable as rent.

The Landlord states that it has not received the Tenant's forwarding address. The Tenant states that it sent the forwarding address to the Landlord by email dated September 24, 2020.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the Landlord's supported evidence of the return of keys, I find on a balance of probabilities that the Landlord has substantiated that the Tenant did not move out of the unit until June 16, 2020. Given the undisputed evidence of the terms of the tenancy and the rents unpaid, I find that the Landlord has substantiated that the Tenant failed to pay rent when and as required under the tenancy agreement while having possession of the unit. The Landlord is therefore entitled to its claim of **\$1,204.00** for April 2020, **\$1,204.00** for May 2020 and **\$2,350.00** for June 2020.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Given the Landlord's email evidence of the unit being in clean and good condition and the Tenant's evidence of leaving the unit reasonably clean, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant failed to leave the unit reasonably clean. I dismiss the claim for cleaning costs.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. There is no evidence of any term in the tenancy agreement that requires the Tenant to pay any re-rental costs for any reason. Although I accept the Landlord's evidence that the Tenant gave short notice to end the tenancy, there has been no rental loss to the end of June 2020. Further given the Landlord's evidence of obtaining a tenant for July 2020, I find that the Landlord has not substantiated the Tenant's short notice caused any rental loss past June 2020. The

Landlord is required under the Act to take reasonably steps to minimize its losses and that would include advertising the unit for rent as early as was done. Nothing in the Act requires a tenant to be responsible for the Landlord's costs to carry out its obligations. For these reasons I find that the Landlord has not substantiated that the Tenant's short notice caused any loss. The Landlord's costs for its agent therefore remains with the Landlord and I dismiss this claim.

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,858.00**. Deducting the security deposit plus zero interest of **\$1,175.00** from this entitlement leaves **\$3,683.00** owed by the Tenant to the Landlord. As only company "DPL" is named as the only tenant on the tenancy agreement, I make this order in that name only.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,175.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$3,683.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 27, 2021

Residential Tenancy Branch