



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in April 2018. Monthly rent at the end of the tenancy was \$2,408.28 payable by the last day of the month. A security deposit of \$1,145.00 was collected at the start of the tenancy and is still held by the landlord. The parties prepared a condition inspection report at both the start and end of the tenancy.

The tenant gave notice to end the tenancy by email correspondence on August 1, 2020. The tenant paid full rent for the month of September 2020 and vacated the premises on September 30, 2020. The landlord submits that the tenant ought to have vacated earlier to accommodate new occupants and that their failure to cooperate in showing the rental unit led to a loss of rental income. The landlord says that they were not able to rent the unit at the same amount and consequently suffered a loss. The landlord submitted into evidence copies of correspondence with the tenants seeking to schedule showings of the rental unit. The landlord seeks a monetary award in the amount of \$4,090.00 for loss of rental income.

The landlord also submits that they incurred loss of income as they needed to take time to advertise, market and show the rental unit. The landlord submits that the total loss of income is \$3,300.00.

The parties prepared a move-out inspection report on October 1, 2020. The tenants provided a forwarding address to the landlord on that date.

The landlord submits that the rental unit required considerable cleaning, work and maintenance due to its state and noted the areas they believed were deficient in the condition inspection report. The tenants did not agree with the landlord's assessment of damages to the rental unit and did not agree to any deduction from the deposit for the tenancy. The parties both submitted numerous photographs of the suite in support of their position. The landlord submitted various invoices and receipts for work performed to the rental unit including; general cleaning, replacement of some fixtures, flooring and electrical work. The landlord claims the amount of \$1,844.31.

The landlord additionally seeks the amount of \$111.24 the cost of printing photos and documents and serving them on the tenants by registered mail.

The tenants dispute the landlord's assessment of the condition of the rental unit and their claim in its entirety. During the hearing, despite saying at the outset that they have been served with all evidentiary materials, the tenant claimed that the landlord's evidence package did not contain a copy of the original tenancy agreement or move-out inspection report. The tenant submits that they have never been provided with a copy

of either document during the tenancy or prior to the hearing. The tenants also submitted into their written materials a monetary claim and various complaints about the landlord's conduct and demeanor during the tenancy.

Analysis

During the hearing, despite their earlier testimony confirming that they have received the landlord's evidentiary materials, the tenant claimed that they were not provided with a copy of the written tenancy agreement or the condition inspection report. The tenant testified that they have never been provided with a copy of either document throughout the course of the tenancy or prior to the hearing. I do not find the tenant's testimony, contradicting their own earlier statement and with no documentary evidence in support, to be believable, credible or with an air of truth. Based on their earlier testimony, I find that the tenants were served with the full contents of the landlord's evidence and find their claim that they were not provided a copy of either the tenancy agreement or condition inspection report to have no merit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the landlord has provided a preponderance of evidence including the condition inspection report, photographs and receipts from third-party companies that the rental unit required some work to be done at the end of the tenancy. While the tenants submitted some photographs in support of their position that the rental unit did not have the damages the landlord claims, their photographs are taken from a distance and do not show the areas of alleged damage. The landlord's evidence clearly shows the deficiencies throughout the rental unit. I find the condition inspection report completed at the time of move-out to be evidence of the state and condition of the suite in accordance with Residential Tenancy Regulation 21. The tenants have provided insufficient evidence to dispute the evidence of the report.

I accept the landlord's submission that the rental unit required some cleaning, work and replacement of fixtures due to its state. I accept the landlord's evidence by way of the

various invoices and receipts that the total cost of the work performed is \$1,844.31. I find that the work undertaken was reasonable and proportional to the damage and that the cost of the work is similarly reasonable. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$1,844.31 for the cost of cleaning and repairs.

The parties agree that the tenants gave written notice to end the tenancy on August 1, 2020. In accordance with section 45(1) of the Act the notice is effective on a date no earlier than one month after the date the landlord receives the notice and is the day before the day in the month when rent is payable under the tenancy agreement. As such, the effective date of the tenants' notice was September 30, 2020.

While the landlord submits that the tenants initially gave an end of tenancy date of September 15, 2020, pursuant to section 53 of the Act an incorrect effective date is automatically changed to the earliest date that complies with the *Act* and tenancy agreement. While the landlord says that they were unable to find a new occupant due to the tenants staying in the rental unit until the end of the tenancy, I find this is not a violation on the part of the tenants that gives rise to a monetary award but their remaining in the suite as was their right.

Similarly, I find insufficient evidence to support the landlord's claim that the tenants interfered with the landlord's attempt to re-rent the suite to a degree that it gives rise to a monetary award. I find the copies of correspondence between the parties submitted into evidence to demonstrate that both parties attempted to find convenient times for showings. I find the tenants' response to the landlord in the copies of the communications submitted are phrased in the form of requests asking, "could you reschedule" rather than a refusal to cooperate. A tenant is certainly free to make requests of the landlord, the landlord is under no obligation to entertain these requests when they have provided notice pursuant to section 29 of the *Act*. Based on the evidence of the parties I am not satisfied that the tenants' conduct was anything more than an expression of preference and requests to the landlord rather than a refusal to cooperate in violation of the landlord's right to enter the rental unit. As such, I find that the landlord has not met their evidentiary burden on a balance of probabilities that there has been a violation on the part of the tenants giving rise to a monetary award.

I am also not satisfied with the landlord's submission that they were unable to find a new occupant for the rental unit at the earlier monthly rent and incurred a loss by agreeing to a lower rate with the new occupant. Not only has the landlord failed to provide a copy of a new tenancy agreement to show that the current occupant is paying a lower monthly rate, there is little evidence of how the landlord advertised the suite or

what steps they took to find a new occupant. I find insufficient evidence that the landlord incurred any loss, that losses if they exist are attributable to the tenant or that there has been a violation giving rise to such losses. Consequently, I dismiss this portion of the landlord's claim.

I find that the landlord's claim for printing materials, making copies and mailing them to not be losses incurred as a result of a violation on the part of the tenants but simply the expected costs concurrent with filing and pursuing a claim. Similarly, I find the landlord's claim for loss of income to have little documentary evidence in support and any time spent in an attempt to re-rent the suite is simply the cost of business not attributable to the tenant. I therefore find that the landlord is not entitled to a recovery of these costs and dismiss this portion of the landlord's claim accordingly.

As the landlord's application has some merit, I issue an order allowing the landlord to recover the cost of their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

While the tenants have included in their written submissions various complaints about the landlord and state that they are seeking a monetary award, raising new issues within the evidentiary materials submitted is not an acceptable manner to make a claim. I find the tenants' present attempt to seek a monetary award by raising complaints in their written submissions to be an attempt to circumvent the dispute resolution process and the *Act*. As the tenants have not started a claim in the appropriate manner I make no finding on their attempt to seek a monetary award from the landlord.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$799.31, allowing the landlord to recover the cost of damage to the rental unit and their filing fee and retain the security deposit for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenants 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: January 26, 2021

Residential Tenancy Branch