



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nest Property Management and Real Estate
Service Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent for November 2020 in the amount of \$1,199.00, and for \$25.00 late rent payment for November 2020; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, B.N., and an agent for the Landlord, B.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided or confirmed their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before the Parties testified, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

We reviewed the Parties' tenancy agreement, which stated that the fixed-term tenancy began on April 17, 2020 and ran to November 30, 2020, and was then to operate on a month-to-month basis. The Parties agreed that the Tenants paid the Landlord a monthly rent of \$1,199.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$599.50, and a pet damage deposit of \$599.50, and that the Landlord retained the deposits to apply to this claim. The Parties agreed that the Tenants moved out of the rental unit on October 27, 2020.

In the Application, the Agent requested a monetary order to recover unpaid rent of \$1,235.75. However, he submitted a monetary order worksheet in the amount of \$1,224.00, which includes \$1,199.00 of rent for November 2020, and a \$25.00 late November rent fee, which is set out in clause 7 of the tenancy agreement Addendum.

In the hearing, the Agent also claimed \$36.50 for cleaning the rental unit. He said: "We are looking for compensation for cleaning and for the loss of one month's rent, because of the short notice to end the tenancy." The Agent referred me to a cleaning invoice that included \$5.00 for cleaning materials and an hour of cleaning at \$30.00 per hour, for a total with tax of \$36.75.

The Tenant said that they never received a copy of the written tenancy agreement between the Parties; however, he did not dispute having signed it on April 15, 2020.

The Landlord submitted a copy of the Tenants' handwritten notice to end the tenancy, dated September 26, 2020 ("Notice"). This Notice had the Tenants' names and the rental unit address. In term of the effective vacancy date, the Tenants wrote:

We will be out October 31, when the lease agreement is over. We will return the keys when you return our \$600 damage deposit and \$600 Pet deposit. We will let you know as soon as the suite is clean & vacant.

We are sorry but due to the cases of Covid climbing again we can not allow people coming inside, so if you place on renting it again you will have to show the suite after we are gone.

The Parties agreed that the Tenants allowed the Landlord to show people through the rental unit and that another tenant moved in on December 1, 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. [emphasis added]

I find that the Parties’ tenancy agreement clearly sets out that the term of the lease ran from April 17, 2020 to November 30, 2020, and that it did not end on October 31, 2020, as the Tenants seemed to think. This would mean that the Tenants’ notice to end the tenancy should have been effective November 30, 2020, not October 31, 2020.

Further, notices to end tenancies must comply with section 52, which states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice....

In this case, I find that the Tenants' Notice to end the tenancy was consistent with section 52 of the Act, except that it gave an incorrect vacancy date.

In their submissions, the Landlord also claimed \$36.50 for cleaning; however, they only applied for compensation related to unpaid rent, not for other compensation or money owing. As such, I cannot consider this request, and therefore, I dismiss it with leave to reapply.

Based on the evidence before me, I find that the Landlord is successful in his Application for unpaid rent and late rent fees, as I find that the Tenants breached sections 26 and 45 of the Act in the way they ended the tenancy and by not paying the rent owing to the Landlord in November 2020. Accordingly, I grant the Landlord a monetary award of \$1,199.00 in unpaid rent, pursuant to section 67 of the Act. I also award the Landlord with \$25.00 for the late rent payment fee for November 2020, pursuant to section 67. In addition, I award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act for a total monetary award of **\$1,324.00**.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits in partial satisfaction of the Landlord's monetary award. The Landlord is authorized to retain the Tenants' security and pet damage deposits of \$1,199.00, and they are awarded a Monetary Order in the amount of **\$125.00** against the Tenants for recovery of the remaining amount of the award.

Conclusion

The Landlord is successful in their claim for unpaid rent and late rent fees, and they are also awarded recovery of the \$100.00 Application filing fee, for a total award of **\$1,324.00**.

The Landlord is authorized to retain the Tenants' security and pet damage deposits of \$1,199.00 in partial satisfaction of this award. The Landlord is granted a Monetary Order of **\$125.00** for the remainder of the award owing by the Tenants.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: March 04, 2021

Residential Tenancy Branch