



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT, MNDCL-S, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 9, 2020 for a fixed term of four months that was scheduled to end on November 8, 2020. The tenants were obligated to pay \$4295.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2147.50 security deposit. The tenants ended the tenancy early and moved out on October 8, 2020. The tenants did not leave the suite clean which resulted in the landlord hiring a cleaner for \$100.00. The landlord testified that the tenant agreed to relinquish the security deposit if she was unable to rent the suite. The landlord testified that the tenant signed off on this agreement at the move out condition inspection report.

The landlord testified that she was surprised when the tenant filed this application seeking the return of the deposit. The landlord testified that she was sympathetic to the tenants' plight and was the reason why she agreed to only keep the deposit instead of seeking the whole months loss of revenue for the final month of the term. As the tenants decided to renege on their signed agreement, the landlord seeks the loss of one months rent, the cleaning cost and filing fee for a total claim of \$4495.00.

The tenants gave the following testimony. The tenants testified that they felt that since they gave a month notice they could end the tenancy without consequences. The tenants do not dispute that they signed off and agreed to the landlord keeping the deposit but thought they would give it back based on their personal circumstances.

Analysis

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 each party's claim and my findings around each are set out below.

Section 45 of the Act addresses the issue before me as follows:

Tenant's notice

45 (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the 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.

The tenants confirmed and agreed that they moved out before the end of the fixed term, accordingly; I find that the tenants were in breach of the above section. I further find that the landlord attempted to mitigate their losses by trying to rent the unit as soon as possible but were unsuccessful. Based on the above, I find that the landlord is entitled to the loss of revenue for the last month of the agreement in the amount of \$4295.00. The landlord has also provided sufficient documentation to support their claim for cleaning costs of \$100.00. As the landlord has been successful in this application, they are entitled to the recovery of the \$100.00 filing fee. The landlord is entitled to a total award of \$4495.00. The landlord is entitled to retain the deposit in partial satisfaction of the claim.

The tenants have not been successful in their application, accordingly; I dismiss their application in its entirety without leave to reapply.

Conclusion

The landlord has established a claim for \$4495.00. I order that the landlord retain the \$2147.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2347.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants application is dismissed in its entirety without leave to reapply.

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: March 01, 2021

Residential Tenancy Branch