



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-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 damages to the unit - Section 67;
2. A Monetary Order for unpaid rent - 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 Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) by registered mail on November 24, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on November 29, 2020. The Landlord was given full opportunity 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 tenancy under written agreement started on May 1, 2020 for a fixed term to end April 30, 2021. Rent of \$1,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant.

The Tenant did not give any notice to the Landlord that they were moving out of the unit. On November 6, 2020, in contacting the Tenant due to the November 2020 rent cheque being returned NSF, the Landlord learned that the Tenant had moved out of the unit. The Landlord received the Tenant's forwarding address on November 16, 2020, the date of the mutual move-out inspection and report completion. The Landlord claims unpaid rent of \$1,400.00.

The Landlord advertised the unit on November 6, 2020 for the same rental rate and obtained a new tenant for December 1, 2020. The tenancy agreement provides for liquidated damages of \$1,400.00 payable if the Tenant breaks the fixed term. The Landlord claims its actual costs of \$800.00 for the liquidated damages.

The Landlord states that the Tenant failed to leave the carpet clean. The Landlord claims the cost of \$150.00. The Landlord did not provide an invoice for this cost and only provided an invoice for the cost of carpet cleaning prior to the start of the tenancy.

Analysis

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. Based on the undisputed evidence that the Tenant breached the fixed term tenancy and as the tenancy agreement provides for liquidated damages upon this breach, I find that the Landlord has substantiated the claim for **\$800.00**.

Section 45 of the Act provides that a tenant may end a tenancy by giving the landlord notice of that end. Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 7 of the Act 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. As the Tenant did not give any notice to end the tenancy, I find that the tenancy did not end for November 2020 and that the Tenant was therefore required under the tenancy agreement to pay rent for November 2020. It is undisputed that no rent was paid for November 2020. For these reasons and given the Landlord's undisputed evidence of advertising the unit, I find that the Landlord took reasonable steps to mitigate its claim for losses for unpaid November 2020 rent and that the Landlord is therefore entitled to unpaid rent of **\$1,400.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the costs for the damage or loss have been incurred or established. As the Landlord did not provide a receipt for the carpet cleaning, I find that the Landlord has not substantiated that the costs claimed were incurred and I dismiss this claim.

As the Landlord's application has met with substantial success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,300.00**. Deducting the security deposit plus zero interest of **\$700.00** leaves **\$1,600.00** owed to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,600.00**. 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: March 10, 2021

Residential Tenancy Branch