



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was reconvened 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 facts: The tenancy under written agreement of a basement suite in a house started on January 1, 2020. Rent of \$1,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. No move-in inspection was carried out. On September 28, 2020 the Tenant gave the rental unit address as their forwarding address.

The Landlord states that an order of possession was obtained from a previous decision dated September 14, 2020 (the "Previous Decision"). The Landlord states that on September 16, 2020 upon attending the unit with the order the Landlord was met by an adult person who identified himself as the Tenant's brother "B". The Landlord is not sure if this was true. The Landlord states that B was residing there and informed the Landlord that B had paid the Tenant rent to take over the rental unit and had the key to the unit. B knew the Tenant's name. The Landlord states that he followed up with the Tenant who said that they did not know the people found by the Landlord. The Landlord states that the upper tenant also said the Tenant had told him that B was her brother. The Landlord states that B was told that they were not interested in a tenancy with him and gave him the order of possession. The Landlord states that the occupants moved out on September 22, 2020. The Landlord claims \$880.00 in rent for the period September 1 to 22, 2020, inclusive.

The Tenant states that they moved out of the unit on August 15, 2020 after having been given a 10-day notice to end tenancy for unpaid rent. The Tenant states that it moved out before the effective date on the Notice. The Tenant states that the keys to the unit were left inside the unit. The Tenant states that they do not know who B was and that B was not the Tenant's brother.

The Landlord's Witness, the father of the Landlord, states that he was with the Landlord when the Landlord went to the unit and saw and heard the conversation between the Landlord and B. The Witness recounts the event.

The Landlord states that three of the Tenant's rent cheques for April 1, May 1, and September 1, 2020 were returned NSF and the Landlord claims the three \$20.00 fees charged by the Landlord's bank for a total claim of \$60.00. The Landlord provides copies of banking statements. The Tenant states that the Landlord was given post dated cheques to December 2020 at the onset of the tenancy. The Tenant states that the cheques were cancelled in March 2020 and that the Landlord was informed on

March 26, 2020 and several times thereafter. The Tenant provides texts in relation to the cancellation of the cheques. The Tenant states that rent payments for April and May 2020 were made by e-transfer. The Tenant provides copies of bank statements showing the e-transfers. The Landlord states that the Tenant did not inform the Landlord of the cancellation of the cheques until May 30, 2020.

The Landlord states that the Tenant caused the upper tenant to end its fixed term lease early and the ensuing tenant also cancelled its tenancy as the Tenant would not share the laundry. The Landlord claims \$3,000.00. The Tenant states that it did nothing to cause these tenants to move out. The Landlord confirms that it has no witness statements or other evidence to support this claim.

The Parties agree that during the tenancy the Tenant changed the locks to the unit without permission from the Landlord and that no key to the new lock was given to the Landlord. The Landlord states that it did not have a key to the unit when B was found at the unit and that B did not return any keys. The Landlord states that B left the unit unlocked at move-out. The Landlord claims \$45.73 as the costs for a deadbolt.

The Landlord withdraws its remaining claims.

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. Section 7(2) of the Act provides that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. The Previous Decision sets out that the Tenant had moved out of the unit by the date of the hearing on September 14, 2020 however no date for that move-out is set out. While the Tenant's evidence is that they moved out of the unit in August 2020, it is undisputed that the Tenant had changed the

locks to the unit without giving the Landlord a copy and that the Tenant did not inform the Landlord of its move-out date. For these reasons I find on a balance of probabilities that the tenancy ended on September 14, 2020 and that the Landlord is entitled to rent of **\$560.00** ($1,200/30 = 40$ per day; $\$40.00 \times 14$ days = 560.00) for the period September 1 to 14, 2020 inclusive. As the Landlord did not act immediately on its right to claim possession of the unit, I find that the Landlord failed to act to mitigate its rental losses and dismiss the claim for unpaid rent past September 14, 2020.

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. Given the Tenant's text evidence I find on a balance of probabilities that the Landlord knew of the cancelled cheques in advance of the June 2020 rent payment. I also find that despite this knowledge the Landlord was prepared to deposit the June 2020 cheque. It is undisputed that the Landlord did deposit the September 2020 cheque and I consider that this was done after the Landlord's own evidence of being informed in May 2020 of the cancelled cheques. For these reason I prefer the Tenant's evidence that the Landlord was informed of the cheques being cancelled starting with the April 2020 cheque and that the Landlord's own acts to deposit cheques for and after this date caused the costs to the Landlord. I therefore dismiss the claim for NSF fees.

Given the Tenant's denial that it caused any of the Landlord's other tenants to end their tenancy and considering that the Landlord has no evidence to support this claim I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the Landlord any rental loss. I dismiss the claim for \$3,000.00.

Based on the undisputed evidence that the Tenant changed the locks to the unit without providing the Landlord with a copy, given the Landlord's evidence that no keys were left

in the unit and given the Landlord's receipts for the cost, I find on a balance of probabilities that the Landlord has substantiated its claim for **\$45.73**.

As the Landlord has withdrawn its remaining claims, I dismiss these claims.

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 **\$705.73**. Deducting the security deposit plus zero interest of **\$600.00** from this entitlement leaves **\$105.73** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$105.73**. 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: April 20, 2021

Residential Tenancy Branch