



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT
 MNRL, MNDCL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on December 7, 2020. The Tenant applied for the return of their security deposit, for a monetary order for monetary loss or other money owed and the return of their filing fee.

The Landlord’s Application for Dispute Resolution was made on February 17, 2021. The Landlord applied for a monetary order for losses due to the tenancy, a monetary order for unpaid rent and to recover their filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to a monetary order loss or other money owed?
- Are the Tenants entitled to recover the cost of the filing fee?

- Is the Landlord entitled to a monetary order for loss or other money owed?
- Is the Landlord entitled to monetary for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the Tenant moved into the rental unit on February 15, 2020, taking over a “room” that have been rented by a previous renter under an existing written tenancy agreement between the Landlord and six other renters. It was agreed that the Tenant rented a partially furnished room; the room was a walk-in closet, accessed through a bathroom that contained no windows or secondary door. The Landlord testified that they wrote this Tenant’s name on the existing tenancy agreement but agreed that this Tenant never signed that document. The Landlord submitted a copy of a tenancy agreement into documentary evidence.

The parties agreed that rent in the amount of \$1,100.00 was to be paid by the first day of each month, and at the outset of the tenancy, the previous renter assigned their \$500.00 security deposit to this Tenant’s tenancy. The parties also agreed that no move-in or move-out inspection had been completed for this tenancy.

Additionally, the Tenant and Landlord agreed that the Landlord had insisted on collecting first and last months rent at the outset of this tenancy.

The Tenant testified that the local fire department attended the rental unit on May 8, 2020, and order that the Tenant vacate the space rented to them by the Landlord. The Tenant testified that the Landlord had installed a bunk bed in a walk-in closet of the rental unit and that this was the space they had been rented under their tenancy with the Landlord. The Tenant testified that the fire department inspection stated that the space could not be rented as a bedroom, as the space had no window or other form of secondary exit. The Tenant testified that they are seeking recovery of all of their rent paid for the full term of their tenancy, in the amount of \$3,600.00, due to the Landlord renting them an illegal space. The Tenant submitted a copy of the municipal by-law/fire depart evection report into documentary evidence. The Tenant also submitted a copy of an email chain between the local fire department and a local by-law enforcement officer into documentary evidence.

The Landlord testified that the Tenant viewed the space before renting it and had agreed to rent the space as is, and therefore they are not entitled to the recovery of any rent paid for this tenancy.

The Tenant testified that they vacated the rental unit on May 8, 2020, as ordered by the local fire department.

The Landlord testified that the Tenant ended their tenancy without notice; the Landlord testified that they are requesting one-month rent, \$1,100.00, in compensation due to the Tenant's short notice to end the tenancy and their lost rental income for June 2020.

Additionally, the Landlord testified that the Tenant did not pay the rent for May 2020, as the rent they paid in May went towards their outstanding April 2020 rent. The Landlord requested a monetary award for the outstanding rent for May 2020, in the amount of \$1,100.00.

The Tenant testified that they agreed that the rent payment they made in May 2020 had gone to the late payment of rent for April 2020 but that the Landlord had collected first and last months rent at the outset of the tenancy, so May 2020 rent had technically been paid in full.

The Tenant also testified that they should not be required to pay the June 2020 rent due to short notice as it was the fire department that ended the tenancy due to the Landlord's breaches of the fire codes.

The Tenant testified that they are requesting the return of the security deposit that the Landlord is holding for their tenancy.

When asked, the Tenant testified that they had not provided the Landlord with their forwarding address before filing their application for these proceedings. The Tenant confirmed that they had included the forwarding address on their application for these proceedings.

The Landlord confirmed that they are in receipt of the Tenant's forwarding address as of the date of these proceedings.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement entered into evidence by the Landlord, and where I do note that this Tenant's name had been written on to the first page of this document and a previous renter's name has been crossed out, I find that this Tenant did not sign this document. As this Tenant did not sign this document, I find that there is no written tenancy agreement for the tenancy between this Tenant and this Landlord.

Section 13 of the Act states the following:

Requirements for tenancy agreements

13 (1) *A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.*

(2) *A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:*

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
 - (i) the date on which the tenancy starts;*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
 - (vi) which services and facilities are included in the rent;*

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Pursuant to section 13 of the *Act*, a Landlord must prepare a written tenancy agreement signed by both the Landlord and the Tenant. As there is no signed tenancy agreement between these parties, I find that the Landlord was in breach of section 13 of the *Act* for this tenancy.

After reviewing the testimony of these parties, I find that these parties entered into a verbal month-to-month tenancy agreement that started on February 15, 2020, for an agreed-upon monthly rent of \$1,100.00 and that the Landlord is holding a \$500.00 security deposit for this tenancy.

Additionally, I find that the Landlord also collected the first and last months rent at the outset of this tenancy. Section 17 of the *Act* allows a Landlord to collect a security deposit at the outset of a tenancy; however, section 19 sets limits on the amount of that deposit, stating the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

As a rent payment can not be made payable before the date it is due under the tenancy agreement; I find that the action of this Landlord of collecting the last months rent for this tenancy, at the outset of this tenancy, to constitute the collection of an additional security deposit for this tenancy. Therefore, I find that in total, the Landlord collected a \$1,600.00 security deposit for this tenancy.

Pursuant to section 19 of the *Act*, the maximum security deposit this Landlord may have legally held for this tenancy was \$550.00; therefore, I find that the Landlord was in breach of section 19 of the *Act* when they collected a \$1,600.00 security deposit for this tenancy.

Furthermore, I accept the testimony of the Landlord that they did not conduct a move-in or a move-out inspection for this tenancy.

Section 23 of the Act states the following regarding the move-in inspection

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Section 35 of the Act states the following regarding the move-out inspection:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit,
or

(b) on another mutually agreed day.

(2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(3) *The landlord must complete a condition inspection report in accordance with the regulations.*

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

It is the responsibility of a landlord to ensure that a tenant is offered at least two opportunities to conduct both the move-in and the move-out inspection with the landlord, and if the Tenant refuses to attend the offered inspections, the landlord must conduct the inspection themselves.

I find that this Landlord was in breach of sections 23 and 35 of the Act by failing to conduct both the move-in and move-out inspections for this tenancy. Section 24 and 36 set out the consequences for a landlord that does not complete the required inspections for a tenancy, stating the following:

Division 3 — At the Start of a Tenancy

Consequences for tenant and landlord if report requirements not met

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Division 5 — At the End of a Tenancy

Consequences for tenant and landlord if report requirements not met

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],*
- (b) having complied with section 35 (2), does not participate on either occasion, or*
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, I find that the Landlord extinguished their right to make a claim against the security deposit for this tenancy when they failed to conduct a move-in or a move-out inspection for this tenancy.

As for the Landlord's claim for lost rental income for June 2020, in the amount of \$1,100.00, due to short notice to end the tenancy by the Tenant. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

First, I must determine if there has been a breach of the *Act* by the Tenant. Section 45(1) of the *Act* states that a tenant can end a periodic tenancy (a month-to-month tenancy) agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

45 (1) *A tenant may end a periodic 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, and

(b) 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

Although this was a month-to-month tenancy, I found the Tenant's testimony support by the documentary evidence, specifically, the By-Law report, to be a creatable account of the events that cause the end of this tenancy.

I find that the rental unit, being rented by this Tenant was shut down due to a municipal order and that the Tenant moved out in accordance with that order. As this tenancy ended due to a breach of municipal laws by the Landlord, and not a breach of the Tenant, that this Tenant was not required to provide the Landlord with written notice to end this tenancy. As no notice was required from this Tenant to end this tenancy there could be no short notice in this instance. Therefore, I find the Landlord is not entitled to their claim for lost rental income. Accordingly, I dismiss the Landlord's claim for lost rental income in its entirety.

As for the Landlord's claim for unpaid rent for May 2020, I accept the agreed-upon testimony of these parties that the Landlord collected the first and last months rent at the outset of this tenancy. As May 2020 was the last month of this tenancy, I find that the Landlord had been paid in full for May 2020 rent from the \$1,600.00 security deposit that the Landlord had collected for this tenancy. As the May 2020 rent had been paid in full, and in advance, I dismiss this portion of the Landlord's claim in its entirety.

As for the Tenant's claim for the recovery of all of their rent paid due to the Landlord renting them an illegal suite, after reviewing all of the testimony and documentary evidence provided by these parties, I find that it was reasonable to expect that this Tenant ought to have known that they were renting an illegal suite when they first viewed the space before entering into this rental agreement. It is understandable that the Tenant agreed to take this space only due to the extremely low availability in the rental market in which this rental unit is located; however, I find that even after viewing this space, this Tenant freely agreed to rent this space, as is, from the Landlord. Consequently, I find that the Tenant was legally required to pay the full rent for the period in which they lived in the rental unit.

Although, as I have previously found that this tenancy ended due to municipal order on May 8, 2020, and that the Tenant had paid the full rent for May 2020, I find that the Tenant is entitled to the recovery of their rent paid for the period of time in which they had paid to live in the rental unit but was unable to live there due to the municipal order to vacate the rental unit. Accordingly, I find that the Tenant is entitled to the recovery of their rent, in the amount of \$867.95, for the period between May 8, 2020, to May 31, 2021, for a total of 24 days at the per diem rate of \$36.16 per day.

As for the Tenant's claim for the recovery their remaining security deposit that the Landlord continues to hold for this tenancy, section 38(1) of the Act gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on May 8, 2020, the date the Tenant was ordered to vacate this rental unit. However, I accept the testimony of the Tenant that as of the date of these proceedings, they had not provided the Landlord with their written forwarding address. Therefore, I must dismiss the Tenant's application to recover their security deposit with leave to reapply.

However, I find that, as of the date of this hearing, the Landlord is now in receipt of the Tenants forwarding address. Accordingly, as the Landlord has extinguished their right to make a claim against the deposit, the Landlord now has 15 days, from the date of this decision, to return the security deposit to the Tenant pursuant to section 38 of the *Act*.

If the Landlord fails to return the security deposit to the Tenant as required, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this

hearing. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to the recovery of their filing fee.

Overall, I grant the Tenant a \$967.95 monetary order, comprised of the \$867.96 in rent recovery, \$100.00 in the recovery of their filing fee for their application.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply.

I grant the Tenant a **Monetary Order** in the amount of **\$967.95**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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.

I find that as of the date of this hearing, the Landlord has received the Tenant's forwarding address.

I order the Landlord to return the Tenant's security deposits to the Tenant within 15 days of the date of this decision.

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: April 16, 2021

Residential Tenancy Branch