



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 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 unpaid rent - Section 67;
2. A Monetary Order for damage 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. The Landlord confirms that its application was made on December 7, 2020.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on August 20, 2015. Rent of \$1,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$200.00 as a security deposit. No move-in inspection with a completed report copied to the Tenants was done. The Landlord resides above the unit. No rent was paid for December 2020.

The Landlord states that the Tenants moved out of the unit on December 10, 2020 without notice to the Landlord despite a previous mutual agreement for the tenancy to end on February 28, 2021. The Landlord references a Decision dated November 10, 2020 setting out this agreement. The Landlord states they saw the Tenants start to move out on December 1, 2020 and that on December 10, 2020 they saw that the Tenants had moved out their furniture.

The Tenant states that while they were still in the process of moving out of the unit they were locked out of the unit by the Landlord. The Tenant states that they left the unit at 10:00 a.m. on December 10, 2020 and when they returned that evening their keys would not work. The Tenant states that they returned again the next day and the keys still would not work.

The Landlord states that they did not change the locks to the unit. The Landlord states that it was not sure if the Tenants were coming back and were afraid to enter the unit so on December 11, 2020, they posted a 24-hour notice for an inspection of the unit. The Landlord states that they did not hear anything from the Tenants. The Landlord states that they did not call the Tenants as the previous mutual agreement included only written communication between the Parties. It is noted that the Landlord provided a copy of a letter to the Tenant dated November 12, 2020 wherein the Landlord sets out its email address for the payment of rent. The Landlord states that they entered the unit in the evening of December 12, 2020 and changed the locks to the unit on December 18, 2020.

The Tenant confirms that they had entered into a mutual agreement with the Landlord to end the tenancy on February 28, 2021 as set out in a Decision dated November 10, 2020. The Tenant states that at the time they only had problems with their hot water. The Tenant states that in mid November 2020 the Landlord again cut off utilities and that although they texted the Landlord there was no response. The Tenant states that they then decided that they had to move out earlier than agreed. The Tenants

submissions indicate that the Tenants are elderly people in their 70's. The Tenant states that on December 8, 2020 the Landlord had again turned off the electricity and water to the unit. The Tenant states that the police were called at this point however the police informed the Tenants that it was a matter for the Residential Tenancy Branch (the "RTB") and left. The Tenant states that it was in the process of moving its belongings out of the unit and that in the evening of December 10, 2020 when they returned to the unit the locks had been changed. The Tenant states that they also returned on December 11, 2020 and still could not enter the unit. The Tenant states that they did not call the police at this time as the police had not helped previously. The Tenant states that they were unable to complete the removal of their belongings and leave the house reasonably cleaned and undamaged. The Tenant states that the Landlord's photos show the belongings that were still left including a television and children's toys. The Tenants submissions indicate that family photographs were also left behind. The Tenant states that no notice for an inspection was posted on the unit door when they returned to the unit on December 10 and 11, 2020.

The Landlord states that it conducted the move-out inspection on December 12, 2020 and took photos but that no move-out inspection report was completed.

The Landlord states that they never turned off the utilities and that although the Tenants did complain about the hot water being turned off in November 2020 the problem was fixed as it was determined that there were too many people in the Tenants' unit using up the available hot water. The Landlord states that it was never notified about the problems with electricity.

The Landlord claims costs to repair damages to the unit. The Landlord states that it only provided an estimate for the costs claimed at the time of their application. The Landlord states that they cleaned the unit but that the company who provided the estimate did the repairs over December 2020 and January 2021. The Landlord states that the repairs took this amount of time as the company was busy and could only come

periodically due to covid. The Landlord confirms that it did not provide an invoice from the company. The Landlord confirms that the unit and its interior, including the carpets, were new in 2004. The Landlord states that the stove was purchased used for the onset of the tenancy. The Landlord agrees that the stove could be as much as 20 years old at the end of the tenancy. The Landlord states that the unit was last painted in 2015. The Landlord confirms that two costs being claimed were claimed twice in error as set out on the monetary order worksheet. The Landlord withdraws the claims for \$100.00 for the lights and \$500.00 for cleaning as the costs claimed in error. The Tenant states that they left caused no damages to the unit and that the damages being claimed by the Landlord were pre-existing damages. The Tenant states that they could not complete their move or leave the unit clean as the Landlord had locked them out.

The Landlord claims unpaid rent for December 1 to 10, 2020 inclusive and lost rental income for the remainder of December 2020 and for January and February 2021. The Landlord states that the Tenants are liable for this rent as they had agreed to end the tenancy on February 28, 2021 and that they breached this agreement. The Landlord states that on January 11, 2021 it placed a written advertisement on a community bulletin board and obtained a new tenant for March 15, 2021 at a monthly rental rate of \$1,100.00. The Landlord states that they chose not to advertise online as they were busy fixing the unit and were not even sure if they would get another tenant, so they took their time in looking for new tenants.

Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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. Based on the undisputed evidence that the Tenant had possession of the unit until December 10, 2020 and did not pay rent for December 2020 I find that the Landlord has substantiated unpaid rent of **\$387.10** for the period December 1 to 10,

2020, inclusive. I base this calculation on a per diem of \$38.71 (\$1,200.00/31) for each of the 10 days.

Section 31(1) of the Act provides that during a tenancy a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. Section 29(1)(e) of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant has abandoned the rental unit. Section 44(1)(d) of the Act provides that a tenancy ends if a tenant vacates or abandons the rental unit.

The Landlord's evidence is that it was aware the Tenants were moving out their belongings over some days to and including December 10, 2020. The Landlord's evidence is that at this time it did not know whether the Tenants were returning. I take this to mean that the Landlord did not know if the Tenants had completed their move out of the unit. There is no evidence that the Landlord sought to communicate in writing with the Tenants to confirm that they were still returning to the unit. There is no evidence that the Tenants were behaving surreptitiously only that there was no verbal or phone communication as agreed in the previous Decision dated November 10, 2020. The Landlord's evidence is that an inspection was scheduled for December 12, 2020 and that the Landlord completed the inspection alone and took photos. I take this to mean that the photos were taken on December 12, 2020. While the Landlord provides these photos to support the state of the unit, I also consider that it supports the Tenant's evidence that the Tenants had not completed their move on December 10, 2020. I also note the Tenant's undisputed submission that indicated valuables left behind such as family photographs which tends to support this finding. It is undisputed that the Landlord did change the locks to the unit and there is no evidence that something occurred prior to the lock change to support that the Tenants abandoned the unit and some of their belongings. There is no evidence that the lock change was necessary for any reason other than the Landlord's decision to lock the Tenants out of the unit. Finally, I found

the Tenants evidence of finding themselves locked out of the unit on December 10, 2020 to hold a ring of truth. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenants abandoned the unit and that the Landlord breached the Act by locking the Tenants out of the unit on December 10, 2020. As the Landlord changed the locks, I find that the Landlord ended the tenancy on that date and that the Landlord has not substantiated that the Tenant caused any lost rental income. I therefore dismiss the Landlord's claim for any further rent past December 10, 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. The Tenants could not enter the unit to complete their move-out obligations because the Landlord had changed the locks. For this reason, I find that the Landlord acted to stop any opportunity for the Tenants to comply with the Act and has not substantiated that the Tenants caused, either by act or negligence, the unit to be unclean and damaged beyond wear and tear. I dismiss the claims for cleaning and repairs.

As the Landlord's claims have met with minor success due to the Landlord's own breaches of the Act, I decline to award recovery of the filing fee. Deducting the security deposit of \$200.00 plus zero interest from the Landlord's total entitlement of **\$\$387.10** leaves **\$187.10** owed to the Landlord.

Should the Tenant have suffered losses in relation to be locked out of the unit and noting that the Tenant made other claims of breaches by the Landlord in its submissions that have not been considered in this dispute, the Tenant remains at liberty to make an application in relation to these breaches.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$200.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$187.10**. 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 7, 2021

Residential Tenancy Branch