



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **LL: MNDL-S, MNRL-S, FFL**
 TT: MNSDB-DR

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the deposits for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent KH (the “Landlord”).

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to the deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

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 the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in May 2020 and ended December 31, 2020. A copy of the signed tenancy agreement was submitted into evidence. Monthly rent was \$1,650.00 payable on the first of each month. The signed tenancy agreement provides that monthly rent is discounted to \$1,400.00 until September 2020 at which point the full monthly rent is payable. A security deposit of \$700.00 and pet damage deposit of \$700.00 were collected at the start of the tenancy and are still held by the landlord. The tenant paid a subsequent \$350.00 towards the security and pet damage deposit in September 2020 and that amount is also held by the landlord.

The signed tenancy agreement provides that a late fee of \$25.00 will be applied to rent not received by the first of each month. The tenancy agreement also provides that the landlord will deduct \$125.00 from the deposits for cleaning of the rental unit at the end of the tenancy.

The tenant gave notice by email correspondence on November 30, 2020 to end the tenancy and vacated the rental unit by December 31, 2020. The landlord confirmed receipt of the correspondence from the tenant but submits that they did not interpret the letter as a notice to end the tenancy. A copy of the correspondence was submitted and in relevant portions it reads:

I really tried to sustain being able to the 1400 to 1650 a month change in September. Unfortunately the 60 plus hour work weeks with the new covid restrictions aren't possibly sustainable and trust me I've given every opportunity possible given my situation with having a dog. I enjoyed my time with the Plan A, and hope to work with you in the future

The tenant submits that the correspondence follows earlier conversations between the parties where the tenant expressed their intention to end the tenancy and that it was followed by subsequent discussions to schedule a move-out inspection.

The landlord submits that the correspondence did not state the tenant's intention to end the tenancy, did not provide an effective date and was not interpreted as a notice to end

the tenancy. The landlord submits that they later became aware of the tenant's intention to end the tenancy in December 2020 but were never provided proper notice.

The parties prepared a move-out inspection report at the end of the tenancy and the tenant provided a forwarding address to the landlord in writing on the move-out inspection report dated December 31, 2020.

The tenant submits that they did not authorize the landlord to retain any portion of the deposits and seek their full return.

The landlord submits that the correspondence of November 30, 2020 was not a valid notice to end the tenancy and they were unaware of the tenant's intentions until later. They seek a monetary award comprised of the unpaid rent for January 2021 in the amount of \$1,650.00, the mandatory move-out cleaning fee of \$125.00 and a late fee of \$25.00.

Analysis

Section 20 of the *Act* provides, in relevant parts, the following prohibitions respective deposits for a tenancy.

20 A landlord must not do any of the following:

- (a) Require a security deposit at any time other than when the landlord and tenant enter into a tenancy agreement;
- ...
- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- ...
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

I accept the undisputed evidence of the parties that the tenant paid a security deposit of \$700.00 and pet damage deposit of \$700.00 when the parties entered into the tenancy agreement in May 2020. I accept that the tenant paid an additional \$350.00 in September 2020. I find that requiring and collecting security and pet damage deposits

several months into a tenancy is prohibited by the *Act*. I find that the \$350.00 is properly characterized as an overpayment and the tenant is entitled to a full return of this amount. I find that the balance of \$1,400.00 comprises the security and pet damage deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the clause in the tenancy agreement which provides that the tenant will be charged a cleaning fee and automatically authorizes the landlord to make a deduction from the deposits is contrary to subsection 20(e) and unenforceable. While the parties may have entered into the tenancy agreement and agreed to such a term, pursuant to section 5 of the *Act* I find that any attempt to contract out of the prohibition on an automatic deduction is of no effect. Accordingly, I find no basis for the landlord's deduction of \$125.00 for cleaning fees.

I find the correspondence of the tenant to be sufficient notice to end the tenancy. The email correspondence provides the address of the rental unit in its subject line and I find the content to reasonably express the tenant's intention to move on from this tenancy. I further accept the evidence of the parties that there had been earlier discussions between the parties which contextualizes the correspondence. I find the correspondence to be a clear and unambiguous statement of the tenant's intention to end the tenancy on the earliest permissible date. Pursuant to section 45(1) and section 53 of the *Act*, I find that the effective date of the tenant's notice is automatically changed to be the earliest effective date of December 31, 2020.

Accordingly, I find no basis for the landlord's monetary claim for unpaid rent or late fees as I find that the tenant had given effective notice to end the tenancy on December 31, 2020.

The landlord's application for a monetary award is dismissed. As the landlord was not successful in their application they are not entitled to recover the filing fee from the tenant.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$1,750.00, comprised of a return of the security deposit of \$700.00, pet damage deposit of \$700.00 and overpayment of \$350.00 made for this tenancy.

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.

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: May 18, 2021

Residential Tenancy Branch