



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing. The landlord had counsel assist him. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself.

Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written

submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of all or a portion of her pet damage and security deposits?

Background, Evidence

The tenant gave the following testimony. The one-year fixed term tenancy began on May 1, 2020 and ended on November 1, 2020. The tenants were obligated to pay \$4000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$8000.00 security deposit and \$2500.00 pet deposit. The tenant testified that her husband was killed in July 2020 and that her aunt had to return to full time care facility. As a result of those two issues, the tenant could no longer afford the rent and gave the landlord notice in August 2020 that she would vacate as of November 1, 2020. The tenant testified that the home was left as she received it and that new tenants moved in the day that she moved out. The tenant wants the return of both her deposits for a total claim of \$10,500.00.

The landlord gave the following testimony. The landlord testified that he charged the tenant an \$8000.00 re-rental fee in advance if she broke the lease. The landlord testified that its part of the rental agreement and she signed it. Counsel submits that the home was left in "immaculate" condition but the tenant "broke the lease" so the landlord should be entitled to retain the \$8000.00 and will return the \$2500.00 to the tenant.

Analysis

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.

It is worth noting that the landlord was extremely disorganized when presenting his evidence. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain when the tenancy ended and why there was a security deposit four times the amount allowable under the *Act*. Much of his testimony lacked clarity or logic. The landlord presented his evidence in a very disjointed and vague fashion.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The principal aspects of the landlords claim and my findings is set out below.

Rent Loss

I find that the landlord and tenants entered into a fixed term tenancy for the period from May 1, 2020 to May 1, 2021. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to

the landlord. In this case, the tenants ended the tenancy on November 1, 2020, prior to the end of the fixed term on May 1, 2021. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* **to do whatever is reasonable to minimize that loss.**

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for the re-rental fee of \$8000.00, without leave to reapply. I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. The landlord wasn't even sure if he had suffered a rental loss or for which months. I find that the landlord failed to show how it properly mitigated losses, **if any**; in efforts to re-rent the unit. The landlord did not even know when the rental unit was re-rented to new tenants. Based on the above, I dismiss the landlord's application in its entirety without leave to reapply.

I order that the landlord return the \$8000.00 security deposit and \$2500.00 pet deposit to the tenant.

Conclusion

The tenant has established a claim for \$10,500.00. I grant the tenant an order under section 67 for the balance due of \$10,500.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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

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 31, 2021

Residential Tenancy Branch