



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL
 MNSDB-DR, FFT

Introduction

On January 07, 2021 a Decision and monetary order were made by the Director. The tenant applied for a review of the Decision and resulting order, which was granted and referred to this Review Hearing.

The Review Hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The parties both attended the Review Hearing and the tenant confirmed that the names of the tenant in the applications are one in the same.

The parties each gave affirmed testimony, provided evidentiary material, and were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The landlord testified that this tenancy began on March 22, 2019 and a new tenancy agreement was entered into by the parties for a fixed-term commencing on April 1, 2020 and expiring on September 1, 2020. The tenancy ended on August 2, 2020 and the tenant returned the keys to the landlord on August 17, 2020.

Rent in the amount of \$2,200.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by the landlord.

The rental unit is a single family house, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant gave notice to end the tenancy on July 10, 2020 effective August 1, 2020 and a copy has been provided. No rent was paid for August, 2020. On August 13, 2020 the landlord received a forwarding address from the tenant in an email, due to COVID-19.

The landlord did not advertise the rental unit for rent but on July 13, 2020 the landlord contacted 2 tenants whom the landlord knew were looking for a rental. No response was received by one of them and the other replied on August 6, 2020 stating that they didn't want it.

The landlord re-rented the rental unit effective September 1, 2020.

The tenant did not agree that the landlord keep any portion of the security deposit or pet damage deposit, and the landlord applies to keep both deposits in partial satisfaction of the landlord's claim of \$2,200.00 for unpaid rent. The landlord was not aware that the landlord could only apply to keep a pet damage deposit for damage caused by a pet.

The tenant testified that she gave notice to end the tenancy on July 10, 2020 and the Residential Tenancy Branch advised that the landlord must mitigate any losses. The tenant needed a cheaper rental unit, and the landlord knew the tenant was struggling.

The tenant messaged the landlord about Facebook posts of people wanting a rental home, but the landlord didn't list it until August 9, 2020; that's not an effort to try to rent it.

Analysis

Firstly, dealing with the landlord's application, a tenant is required to give notice to end a tenancy the day before the day rent is payable under the tenancy agreement, and it is required to be effective on the last day of the rental period. If the tenancy is for a fixed period, the tenant's notice to vacate must not be effective earlier than the date specified as the end of the tenancy:

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.

(2) 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.

In this case, the rental period runs monthly, and the tenancy agreement specifies a fixed-term until September 1, 2020. The tenant gave notice to end the tenancy on July 10, 2020, which would not have taken effect until August 31, 2020 in any event.

The tenant is correct that the landlord is required to mitigate any loss of rental revenue, and testified that the landlord did not do so. However, because the tenant's notice to end the tenancy does not take effect until August 31, 2020 according to the law, the landlord is not required to mitigate, and the rental unit was re-rented for September 1, 2020. The

tenant did not pay rent for the month of August, 2020 and the landlord is entitled to recover \$2,200.00.

With respect to the tenant's application, the *Residential Tenancy Act* requires a landlord to return a security deposit and any pet damage deposit to the tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. Further, a landlord may only apply to keep a pet damage deposit for damages caused by a pet.

In this case, the landlord testified that she received the tenant's forwarding address in writing on August 13, 2020 in an email due to COVID-19. The Director issued an order on March 30, 2020 with respect to providing documents by email, however that order expired on June 20, 2020. I refer also to Residential Tenancy Policy Guideline 41 which explains that a forwarding address can be hand delivered, or written on the move-out condition inspection report, or sent to the landlord by registered mail, by placing it the landlord's mailbox or mail slot, or by attaching it to the landlord's door or other conspicuous place. I am not satisfied that the tenant has established that the forwarding address was given to the landlord in accordance with the *Act* or the order of the Director, and I dismiss the tenant's application.

Since the landlord has been successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has not made an application for damages caused by the tenant's pet. However, having found that the landlord is entitled to \$2,200.00 for unpaid rent and \$100.00 for the filing fee, I find it prudent and fair to order the landlord to keep the \$1,100.00 security deposit and \$300.00 pet damage deposit, for a total of \$1,400.00.

The Decision and order of the Director dated January 07, 2021 resulted in the same conclusion. The *Act* specifies that following a Review Hearing I may confirm, vary or set aside the original order, and I hereby confirm the monetary order made January 07, 2021.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby confirm the Decision and order made on January 07, 2021, and order the landlord to keep the \$1,100.00 security deposit and the \$300.00 pet damage deposit, and I confirm

the monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00.

This order is final and binding and may be enforced.

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: June 14, 2021

Residential Tenancy Branch