



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDL-S, MNDCL-S, FFL**
 TT: MNETC, MNSD, FFT

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 damages and loss pursuant to section 67;
- Authorization to retain the deposit 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 monetary award for damages and loss pursuant to section 67;
- A return of the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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 landlord was assisted by their agent.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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 either party entitled to a monetary award as claimed?

Is either party entitled to the deposit for this tenancy?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

This tenancy began in September 1, 2018 and ended on February 27, 2021. The monthly rent was \$1,650.00 payable on the first of each month. A security deposit of \$825.00 was collected at the start of the tenancy and is still held by the landlord.

A copy of the written tenancy agreement was submitted into evidence. The addendum to the tenancy agreement provides that the tenant must inform the landlord of additional occupants residing in the rental unit and there will be an additional monthly fee of \$100.00 for each additional occupant. The clause also provides that any violation will result in the forfeiture of the entire security deposit.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated January 31, 2021 with an effective date of March 31, 2021. The tenant issued a notice to end the tenancy pursuant to section 50 of the *Act* on February 9, 2021 with an effective date of February 27, 2021. The tenant paid full rent through to February 28, 2021.

The parties prepared both a move-in and move-out condition inspection report in accordance with the Act and regulations. A copy of the report was submitted into evidence. The tenant gives written consent to the landlord retaining \$150.00 of the security deposit on the report.

The landlord submits that an argument broke out at the time of the move-out inspection and while the inspection report is signed by both parties, they do not believe it was completed or should be binding. The landlord says that the rental unit required cleaning, repairs and replacement of fixtures for which they claim a monetary award of \$1,452.00. The landlord specifically says that the blinds to the rental unit, which were new at the start of the tenancy, were discovered to be damaged requiring complete replacement and there are some items that were missing from the suite. The landlord submitted receipts for the cost of the work performed and items purchased.

The landlord claims that the tenant had an additional occupant residing in the rental unit with them during the tenancy and seeks a retroactive payment of \$3,672.24. The landlord submits that they discovered the additional occupant after the tenancy had ended and were told by the tenant's subsequent landlord that the tenant was claiming they resided in the rental unit with an additional occupant.

The tenant disputes the landlord's claim in its entirety and says there is no basis for a monetary award. The tenant confirms that they authorized the landlord to deduct \$150.00 from the security deposit for this tenancy but has not authorized any other deduction. The tenant submits that they have not received the equivalent of one month's rent under section 51(1) of the *Act* for having received the landlord's 2 Month Notice. The tenant is also seeking the amount of \$58.90, the portion of the rent paid for the month of February 2021 pursuant to section 50(2) of the *Act*.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 an applicant bears the burden to establish their claim on a balance of probabilities.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case I accept the undisputed evidence of the parties that the tenant gave written authorization that the landlord may retain \$150.00 of the security deposit for this tenancy and gave their forwarding address on February 27, 2021, the date the tenancy ended. The landlord filed their application for dispute resolution on March 9, 2021, within the 15 days provided under the *Act*.

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.

Residential Tenancy Regulation 21 provides that a condition inspection report completed in accordance with the Act and regulations is evidence of the state of repair and condition of the rental unit unless there is a preponderance of evidence to the contrary.

The landlord submits that the condition inspection report signed by the parties is not an accurate depiction of the state of repair of the rental unit and additional work and cleaning was required. I find insufficient evidence to support the landlord's present submissions. I find the testimony of the landlord and their agent to be insufficient to demonstrate that there was damage to the rental unit and that the landlord incurred losses as a result. If there was a disagreement between the parties regarding the condition of the suite it would be reasonable to expect that the parties would not sign a document agreeing to an amount to be deducted. I find the audio recordings submitted by the landlord to be of little assistance as it is unclear as to the identity of the speakers and there does not appear to be an agreement to allow additional payments to the landlord.

I am not satisfied, based on the totality of the evidence, that there has been any breach on the part of the tenant resulting in damages to the landlord. I find insufficient evidence that the costs incurred by the landlord are attributable to any violation or breach on the part of the tenant and consequently dismiss this portion of the landlord's application.

I find insufficient evidence to support the portion of the landlord's application seeking retroactive rent from the tenant. I find insufficient evidence to conclude that there were additional occupants in the rental unit during the tenancy such that the landlord is entitled to additional rent payments under their agreement. I find that audio recordings of other individuals relaying what they were told by the tenant to be the very definition of hearsay evidence and of little probative value. Based on the evidence before me I am not satisfied that the landlord has established that there has been a breach of the tenancy agreement giving rise to a basis for a monetary award. Accordingly, I dismiss this portion of the landlord's application.

I accept the undisputed evidence of the parties that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*.

Accordingly, pursuant to section 51(1) of the Act the tenant is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement. Therefore, I issue a monetary award in the tenant's favour in the amount of \$1,650.00, the equivalent of one month's rent under the tenancy agreement.

I accept the undisputed evidence of the parties that the tenant gave the landlord written notice to end the tenancy earlier than the effective date of the 2 Month Notice pursuant to section 50(1). I accept the evidence that the tenant paid full rent for the month of February 2021 and vacated the rental unit on February 27, 2021. Therefore, the tenant is entitled to the portion of the rent paid for the one-day period of February 28, 2021 which is after the effective date of the tenant's notice. I accept the tenant's calculation that the portion of the rent is the sum of \$58.90 and issue a monetary award in that amount.

As the tenant was successful in their application they are entitled to recover the filing fee from the landlord.

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 \$2,483.90, allowing for the return of the balance of the security deposit for this tenancy, their monetary award and the recovery of the filing fee. 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: July 29, 2021

Residential Tenancy Branch