



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The female landlord ("landlord") and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord named in this application, who did not attend this hearing (collectively "landlords"). This hearing lasted approximately 28 minutes.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and both landlords were duly served with the tenants' evidence.

At the outset of the hearing, I informed both parties that Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. The landlord and the two tenants all affirmed under oath that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they had no objections, they wanted to proceed with the hearing, they did not want to settle this application and they wanted me to make a decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenants' deposits?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2021 and ended on March 1, 2021. Monthly rent in the amount of \$3,000.00 was payable on the first day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$750.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties for a fixed term ending on February 1, 2022. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlords by way of an email, that the landlord received on March 8, 2021. The landlords did not have written permission to retain any amount from the tenants' deposits. The landlords' application to retain the tenants' deposits was filed on March 10, 2021. The rental unit is the suite of a house, where the landlords were living separately in the same house.

The landlords seek a monetary order of \$1,500.00 plus the \$100.00 application filing fee. The tenants dispute the landlords' application.

The landlord stated the following facts. The landlords seek rent of \$1,500.00 from March 1 to 15, 2021. The tenants signed a one-year lease, moved in on February 1, 2021, and asked the landlords to break their lease on February 2, 2021. The landlords told the tenants that one-month notice was required but said that they would mitigate

and try to find new tenants. On the following weekend after the tenants gave notice, the landlords showed the rental unit to prospective tenants on Saturday, which the tenants accommodated. The landlords secured new tenants but asked them to move in earlier on March 15, 2021, since they wanted to rent for April 1, 2021. Most people were looking to rent for April 1, 2021. The new tenants signed a one-year lease for the same rent of \$3,000.00 per month, starting on March 15, 2021, and paid rent from this date, even though they moved in on April 1, 2021. The landlords want to retain the tenants' security deposit of \$1,500.00 and are willing to return the tenants' pet damage deposit of \$750.00 to the tenants. The landlords did not provide copies of the new tenancy agreement, any advertisements, or any documented inquiries or showings of the rental unit, prior to this hearing, but can provide same after the hearing. The landlords advertised the rental unit as available on March 1, 2021.

The tenant stated the following facts. The tenants do not agree to pay the landlords \$1,500.00. The tenants were concerned about noise, prior to moving into the rental unit, because the landlord was pregnant at that time. The landlord assured the tenants that there would be no noise from the baby but there was noise. The landlords had two additional kids, that the tenants did not know about earlier, that caused a lot of noise as well. The kids were screaming and yelling throughout the house. The landlords reconfigured a closet and walled off another area in the rental unit. The landlords knew the configuration of the rental unit before the tenants moved in, and the living areas were closer together, which caused more noise for the tenants. The landlords were completing ongoing renovations to the house and the female tenant had to reschedule meetings because of the noise, since she was working from home. There was constant noise from a work bench and hammering, among other things. The tenants needed quiet at the rental unit. Someone was standing on the deck looking into the tenants' rental unit. The tenants gave notice to move out immediately, one day after moving in, due to the noise at the rental unit. The tenants made themselves available for showings that the landlords wanted to conduct at the rental unit.

The landlord stated the following facts in response to the tenant's submissions. The landlords did not change the closets at the rental unit. The wall that the landlords put in under the staircase did not change the configuration of anything, it was done as a security measure because it connected to the landlords' living space. The landlord acknowledges that kids make noise and it is unfortunate. The landlords did not know the configuration of the house well, since they only moved in one month earlier than the tenants.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlords' Application

I find that the landlords and tenants entered into a fixed term tenancy for the period from February 1, 2021 to February 1, 2022.

Subsection 45(2) of the *Act* sets out how tenants 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 landlords.

In this case, the tenants ended the tenancy on March 1, 2021, prior to the end of the fixed term on February 1, 2022. I find that the tenants breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a 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 landlords' application for half a month's rent loss of \$1,500.00, without leave to reapply.

I find that the tenants provided notice to the landlords immediately on February 2, 2021, after moving in the day before on February 1, 2021. The landlord acknowledged that she received notice on the above date. Therefore, I find that the landlords had ample time from February 2, 2021, to find a new tenant to rent the unit for March 1, 2021. I also find that the tenants were accommodating in allowing the landlords to show the rental unit to assist the landlords in mitigating their losses.

I find that the landlords failed to provide documentary evidence including copies of rent advertisements, to show how many advertisements were posted, when they advertised the unit for re-rental, what details were given in the advertisement, or how long the unit was advertised for. The landlords 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 landlords failed to provide a copy of the new tenancy agreement signed with the new tenants, showing when their tenancy began, how long the tenancy was for, and how much rent they were paying.

The landlords had ample time of over four months, from filing this application on March 10, 2021, to this hearing date of July 30, 2021, to provide this evidence but failed to do so. The landlord confirmed that she had the evidence but failed to provide it prior to this hearing.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

Tenants' Deposits

Although the tenants did not apply for the return of their deposits, I am required to consider it on the landlords' application to retain the deposits, as per Residential Tenancy Policy Guideline 17.

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that this tenancy ended on March 1, 2021. The landlords did not return the deposits to the tenants. The tenants provided a written forwarding address to the landlords on March 8, 2021 by email, which was received by the landlords. In accordance with section 88(j) of the *Act* and section 43(1) of the *Regulation*, email is a permitted form of service, effective on March 1, 2021. The landlords filed this application to retain the deposits on March 10, 2021. The tenants did not provide written permission for the landlords to retain their deposits.

Although the landlords' right to claim against the deposits for damages was extinguished as per sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports, the landlords made a loss of rent claim, not a damages claim.

Over the period of this tenancy, no interest is payable on the tenants' deposits. I find that the tenants are not entitled to double the value of their security deposit, only the regular return of \$1,500.00. The landlords applied to retain the security deposit on March 10, 2021, which is within 15 days of the later forwarding address date of March 8, 2021.

A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenants agree otherwise, the landlords are only entitled to use a pet damage deposit for pet damage. Hence, the

landlords did not have written permission to retain the tenants' pet damage deposit, they did not file an application to retain the pet damage deposit for pet damage specifically, and they did not return this \$750.00 pet damage deposit to the tenants.

Therefore, I find that the tenants are entitled to recover double the value of their pet damage deposit of \$750.00, totalling \$1,500.00. Even though the tenants did not apply for double the return of their pet damage deposit, I am required to consider it, as the tenants did not waive their right to it at the hearing, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$3,000.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 30, 2021

Residential Tenancy Branch