



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on September 1, 2019 on a term to end August 27, 2022. Rent of \$917.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenant. On March 27, 2020 the Tenant gave notice to end the tenancy and moved out of the unit on March 30, 2020. The Tenant paid rent for April 2020. The Landlord made no offers for a move-out

inspection and has no evidence of a completed move-out inspection report completed by the Landlord at the end of the tenancy. The Landlord received the Tenant's forwarding address on March 16, 2021.

The Landlord claims unpaid rent for May and June 2020. The Landlord has no evidence of any advertising of the unit or of having a process such as a list of prospective tenants to fill the unit.

The Landlord states that in June 2020 the Tenant was connected with a 3rd party to rent the unit as a sublet for July and August 2020 at a monthly rental rate of \$800.00. A rental agreement was entered into between the Landlord and the 3rd party with the agreement signed by the Landlord and initialled by the Tenant. The Landlord did not provide a copy of that agreement as evidence. The Landlord has no knowledge of the length of the tenancy of the 3rd party. The Landlord claims \$117.00 for each of July and August 2020.

The Tenant states that the Landlord made no effort to rent the unit after the Tenant moved out. The Tenant states that the Landlord contacted the Tenant on June 19, 2020 about the 3rd party as a tenant for July and August 2020.

The Landlord states that on July 1, 2020 the unit was cleaned for the 3rd party's move-in. The Landlord provides an invoice and claims \$140.00. Although the Landlord provided photos to the Tenant no photos were provided to the Residential Tenancy Branch for this dispute. The Tenant states that on August 27, 2020 the Landlord sent an email with the photos about a move-out report however there were no details of the report. The Tenant states that the unit was left reasonably clean for the move-out. The Tenant describes the cleaning done, including the cleaning to the floors, appliances and kitchen.

Analysis

Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates the rental unit. No further rent is payable when a tenancy ends. Based on the undisputed evidence that the Tenant moved out of the unit on March 30, 2020 I find that the tenancy ended on that date and that no further rent was payable.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the undisputed evidence that the Tenant moved out before the fixed term date I find that the Tenant breached the tenancy agreement. However, given the Tenant's evidence that the Landlord did nothing after the end of the tenancy and as the Landlord has no evidence that any steps were taken to find another tenant until June 2020, I find that the Landlord has not substantiated that any reasonable step were taken to minimize any loss arising from the Tenant's breach of the tenancy agreement. The Landlord claims for rents for May and June 2020 is dismissed.

As the tenancy ended March 30, 2020, the Tenant could not have entered into a sublet agreement with the 3rd party for July 2020. Further given the Landlord's oral evidence that the tenancy agreement with the 3rd party was between the Landlord and the 3rd party and without any evidence to show that the Tenant was added as a party to that agreement, I do not consider that the Tenant's initialing of that agreement brought the Tenant into that agreement as a party to the agreement. As the rents for July and August 2020 are rents arising from a tenancy agreement between the 3rd party and the Landlord, I find that the Landlord has not substantiated that the Tenant is liable for any rents under that tenancy agreement. For these reasons I dismiss the claim for July and August 2020 rent.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 35(1) of the Act provides that at the end of a tenancy the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the undisputed evidence that no move-out condition inspection was offered to the Tenant or conducted by the Landlord at the end of the tenancy, as the Landlord has not provided any evidence of a condition inspection report or any other evidence indicating the state of the unit at the end of the tenancy and given the Tenant's evidence that the unit was left reasonably clean at the end of the tenancy I find that the Landlord has not substantiated that the unit was left unclean by the Tenant. I dismiss the claim for cleaning costs.

As none of the Landlord's claims have been successful, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety. I order the Landlord to return the security deposit plus zero interest of \$450.00 to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 25, 2021

Residential Tenancy Branch