



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, FFL**

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and damage to the rental unit; and, authorization to retain the tenant's security deposit.

The landlord appeared at the hearing. The landlord was affirmed and ordered to not make an audio recording of the proceeding.

The landlord had named two co-tenants as respondents and since neither respondent appeared, I explored service of hearing materials upon the respondents.

The landlord testified that he served the male tenant with the proceeding package, and evidence available at the time of filing, in person at the tenant's place of work on March 25, 2021.

The landlord testified that he served additional evidence to an employee at the same location on August 3, 2021. This additional evidence was uploaded to the Residential Tenancy Branch service portal on August 2, 2021.

The landlord acknowledged he did not serve the female co-tenant as he did not know where to serve her.

In the absence of evidence to the contrary, I accepted that the male tenant was duly served, in person, on March 25, 2021. However, I informed the landlord that serving additional evidence upon a third party is not an accepted method of service and I would not consider the additional evidence. Also, I would not proceed against the female co-tenant as she was not served. I asked the landlord whether he still wished to proceed

and he responded that he did wish to proceed with his claim against the male tenant only and he understood the additional evidence would not be accepted or considered.

Accordingly, I excluded the female co-tenant as a named party and I excluded the additional evidence served on August 3, 2021 from further consideration.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent, cleaning and damage, as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The two year fixed term tenancy started on April 1, 2019 and was set to expire on March 31, 2021. The tenant paid a security deposit of \$1250.00 and was required to pay rent of \$2500.00 on the first day of every month.

The landlord submitted that on December 20, 2020 the tenant sent him an email saying they were going to move out on January 5, 2021. The landlord testified that in response to receiving this email he telephoned the tenant and told the tenant he needed to give him one month's notice. The tenant then sent another email to the landlord on December 26, 2020 stating they had an emergency in another country and that they could not stay until the end of the month and would be moving out on January 15, 2021. The landlord testified that the tenant paid one-half of the monthly rent for January 2021 and left one set of keys with the basement suite tenant on January 24, 2021.

The landlord seeks compensation from the tenant for unpaid rent for January 2021 in the amount of \$1250.00 plus \$5000.00 for February 2021 and March 2021 for the tenant ending the tenancy before the end of the fixed term. The landlord also seeks \$450.00 for cleaning and repairs.

The landlord did not indicate on his Application for Dispute Resolution what took place at the rental unit after the tenancy ended and I made enquiries. The landlord testified that after the tenants vacated the rental unit landlord had the unit cleaned and repaired and then his brother moved into the rental unit in May 2021.

I asked the landlord what evidence he could provide me to demonstrate when his brother moved into the rental unit, twice. The landlord responded that it was

unnecessary to have to prove when his brother moved into the rental unit because the only thing that mattered was that the tenants failed to fulfill the fixed term. I informed the landlord that under the Rules of Procedure I may ask questions and order evidence in order to establish entitlement to a claim. The landlord then explained that he did not have a written tenancy agreement with his brother since his brother is a co-owner of the property. I asked if there would be other documentation to show when his brother moved into the rental unit, such as: utility bills, driver's licence changes or insurance policy change of address. The landlord responded that the utilities are in his name and his brother pays him rent and utilities like the tenants did. The landlord also stated that his brother did not change his mailing address on his bills, driver's licence or insurance as his brother owns another property nearby. That being said, the landlord stated he had no evidence to present to me to show when his brother moved into the rental unit.

As for the cleaning and repairs, the landlord stated his family cleaned the house and repairs included painting and repairing the stove. I noted that there were no receipts submitted in support of making repairs and the landlord acknowledged he did not submit any.

Documentary and photographic evidence that was admitted and considered in making this decision included a copy of the tenancy; the tenant's emails of December 20 and 26, 2020; a move-in inspection report; and photographs of the stove/oven and some walls.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement.
2. That the violation caused the party making the application to incur damages or loss as a result of the violation.
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid/loss of rent

Upon review of the tenancy agreement and the tenant's emails, I accept that the tenancy was set to expire on March 31, 2021 and the tenants ended the tenancy in January 2021.

As described in the test for damages above, it not enough to simply establish a breach of the tenancy agreement. Rather, the applicant must also demonstrate that a loss resulted due to the breach and that the applicant did whatever was reasonable to mitigate losses. When a tenant ends a tenancy early, this usually means the landlord has to show efforts were made to re-rent the unit at a marketable rent and when a new tenancy commenced.

The landlord testified that the tenants paid only one-half of the monthly rent for January 2021 and I accept that is accurate considering the tenant stated he was going to end the tenancy on January 15, 2021. However, under the tenancy agreement, the tenants were required to pay the full monthly rent of \$2500.00 on the first day of every month, not a partial payment. Therefore, I find the landlord entitled to recover the remainder of rent owing for January 2021 in the amount of \$1250.00.

The landlord had testified that upon receiving the tenant's emails in December 2020 his response to the tenant was that he required one month's notice. I find this response to be likely truthful as it is consistent with the tenant writing in his December 2, 2020 email that he could not stay until the end of January 2021 due to the family emergency. It is unclear to me why the landlord would require the tenant to give only one month of notice when the landlord is now trying to hold the tenant responsible for fulfilling the fixed term and this inconsistency causes me to question what the landlord did with the property after the tenants vacated. There was no evidence provided to me to demonstrate the landlord tried to re-rent the property and the landlord only provided oral testimony that his brother moved in months later. When I asked about proof to demonstrate when his brother moved in the landlord became agitated and argumentative before providing various explanations as to why no evidence could be provided.

Under Rule 7.23 of the Rules of Procedure:

7.23 Questions by the arbitrator

The arbitrator may ask questions of a party or witness if necessary:

- to determine the relevancy or sufficiency of evidence;
- to assess the credibility of a party or a witness; or

- to otherwise assist the arbitrator in reaching a decision

The Rules of Procedure also define “relevant” to include, in part:

Relevant evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact.

The landlord had testified that his brother paid him rent and utilities, and as such, the date the landlord’s brother started paying rent is relevant to the landlord’s claim for loss of rent for February 2021 and March 2021.

All the above considered, the landlord has a burden to prove the landlord suffered a loss of revenue due to the tenants’ breach of the fixed term and I find I am unsatisfied by the evidence before me to corroborate there was a loss, or if there was a loss that the landlord did whatever was reasonable to mitigate the loss. Therefore, I dismiss the landlord’s claim for unpaid rent for February 2021 and March 2021 without leave to reapply.

Cleaning and repairs

As for the landlord’s claim for \$450.00 for cleaning and repairs, I was not provided any invoices, receipts, estimates or the like to show money was expended on making repairs to the property and the landlord did not provide me with any figure that pertains to making repairs for damage caused by the tenant. As for cleaning, the landlord’s photograph of the oven shows that it was dirty; however, the stove control panel also appears extremely worn out and I find it likely that the stove/oven is at the end of its useful life. As such, I have significant doubt this stove/oven was repaired and cleaned as opposed to disposed of. For these reasons, I find the landlord did not meet his burden to establish an entitlement to \$450.00 for cleaning and repairs and I dismiss this claim without leave to reapply.

The landlord had limited success in this Application for Dispute Resolution and I make no award for recovery of the filing fee.

In keeping with all of my findings and awards above, I authorize the landlord to retain the tenant’s security deposit in satisfaction of the unpaid rent for January 2021. The remainder of the landlord’s claims are dismissed without leave to reapply. Since the security deposit offsets the award for unpaid rent, I do not issue a Monetary Order to either party with this decision.

Conclusion

The landlord is authorized to retain the tenant's security deposit in full satisfaction of the landlord's claim for unpaid rent against the tenant. The landlord's other claims against the tenant are dismissed 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: August 25, 2021

Residential Tenancy Branch