



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and a move-out fee; and, authorization to retain the tenant's security deposit.

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding.

I confirmed the tenant was in receipt of the landlord's proceeding package and evidence. I confirmed the landlord was in receipt of the tenant's documentary evidence, with the exception of a bank statement that the tenant explained was not served upon the landlord as it contained personal banking information.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I noted that the name of the applicant landlords is different than that appearing on the tenancy agreement. The applicant testified that the applicants are the registered owners of the property and the tenancy was managed by a property management company on their behalf. The tenancy agreement indicates the tenancy is being managed by an agent on behalf of "the owners" although the document does not identify the owners. The tenant did not question that the applicants are the owners of the property and I accepted the applicants have standing as landlords in the absence of anything to the contrary.

Although the landlords employed a property manager to act as their agent during the tenancy and the tenant dealt with the property manager and/or building a manger throughout the tenancy, the landlord did not call the property manager or building

manager to testify. As such, the landlord was unable to refute to certain assertions made by the tenant.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover unpaid rent for the month of April 2021 from the tenant, as claimed?
2. Have the landlords established an entitlement to a move-out fee from the tenant, as claimed?
3. Are the landlords authorized to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The one-year fixed term tenancy started on May 1, 2020 and was set to expire on April 30, 2021. The tenant paid a security deposit of \$812.50 and was required to pay rent of \$1625.00 on the first day of every month.

On February 27, 2021 the tenant prepared a written notice to end tenancy indicating she would be moving out "on or about April 30, 2021". In the same notice, the tenant also wrote: "Should I get a place desirable for me I shall leave hear with or without notice, if earlier than April 30th." The tenant's notice was mailed to the property manager and it was received on March 2, 2021.

On March 26, 2021 the tenant requested to book the elevator with the building manager so that she could move out. The tenant was given access to the elevator and moved out on April 2, 2021. On April 6, 2021 the tenant performed the move-out inspection and returned the keys on April 6, 2021. The tenant did not pay rent for April 2021.

Landlord's position

The landlords seek recovery of the \$1625.00 for unpaid rent for April 2021.

The landlord submits that the tenancy was set to end on April 30, 2021 based on the tenant's notice to end tenancy but the tenant unexpectedly moved out earlier without advance notice. After the tenant moved out the landlords proceeded to undertake efforts to re-rent by advertising the unit for rent at \$1650.00 per month. The response was not great so the landlords decided to allow pets at the same rate of \$1650.00 and

the landlords were successful in re-renting the unit starting June 1, 2021 at the rate of \$1650.00.

The landlords also seek \$150.00 for a move-out fee. I noted that I was not provided any corroborating evidence in support of this claim. The landlord stated this amount was deducted from his strata account.

The property manager continues to hold the tenant's security deposit and the landlords seek authorization to retain it in partial satisfaction of the amounts claimed.

Tenant's position

The tenant acknowledged giving the written notice to end tenancy dated February 27, 2021 with an effective date of April 30, 2021 but the tenant also claimed that she had telephoned the property manager and told the property manager that she would move out sooner if she found alternative housing sooner. The tenant could not recall when this telephone call was made and acknowledged she did not give another written notice to end tenancy other than the one dated February 27, 2021.

The tenant also submitted that she had to move out early for her own health and safety. The tenant was of the view that the person living above her was hacking her computer. She also stated that someone attempted to enter her unit and in response she changed the locks to the rental unit.

The tenant submitted that when she contacted the building manager to book the elevator, she wanted access to the elevator so that she could move on March 31, 2021; however, the manager would not provide her access on that date as it was on a long weekend. The tenant stated she would have been able to move out and return a cleaned rental unit, with the keys, to the landlord on March 31, 2021 had the building manager and property manager permitted her to do so and schedule the move-out inspection for that date. The tenant was of the position the building manager caused the tenant's move-out date to be delayed until April 2, 2021 and the property manager would not schedule the move-out inspection before April 6, 2021 even though the tenant would have been ready for the inspection before that date.

As for the move-out fee, the tenant stated that she had paid a move-in fee and she was aware she had to pay a move-out fee so she obtained a bank draft from her bank in the amount of \$150.00 on March 26, 2021. The tenant testified that she gave the bank draft to the building manager. After receiving the landlord's Application for Dispute

Resolution, she contacted the building manager to enquire about the bank draft she gave him. According to the tenant, the building manager informed her that the bank draft was given to the strata counsel and after that he had no more involvement. The tenant testified that she checked with her bank and the bank informed her that the bank draft was not cashed, but it was not returned to her either and she has already suffered a loss of \$150.00 when she took out the bank draft.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Unpaid rent

Upon review of the tenancy agreement, the tenant was required to pay rent on \$1625.00 on the first day of every month for a fixed term set to run to April 30, 2021.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent,

authorization has been given by the landlord or an Arbitrator, or where the tenant has made emergency repairs to the property under section 33 of the Act.

Where a tenant seeks to bring the tenancy to an end, the tenant is required to give the landlord written notice in accordance with section 45 of the Act. Since the tenancy was a fixed term, the tenant was at liberty to give a notice that complies with section 45(2).

Section 45(2) provides:

(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.

[My emphasis underlined]

On February 27, 2021 the tenant wrote a notice to end tenancy, which was received on March 2, 2021. The notice provides for an effective date of April 30, 2021 and that date complies with the requirements of section 45(2). The tenant's statement in the notice that she may move out earlier if she finds a desirable place does not comply with section 45(2). As such, I find the landlord expected the tenancy to end on April 30, 2021.

The tenant vacated the rental unit before April 30, 2021 and the tenant appears to be of the position that if she had vacated on March 31, 2021, when she wanted to, she could have avoided responsibility to pay rent for April 2021. However, vacating the rental unit before the date the tenancy is set to end does not in itself excuse the tenant from fulfilling their financial obligation under the tenancy agreement.

The tenant pointed to suffering from disturbance(s) and/or interference by another occupant(s) of the building as a basis for ending the tenancy early. To end the tenancy early due to unreasonable disturbance or significant interference from another occupant

would require the tenant to serve the landlord with a written notice under section 45(3) of the Act. Section 45(3) of the Act provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

[My emphasis underlined]

The only written notice given by the tenant is the one dated February 27, 2021 that I have described previously. I note that in the notice of February 27, 2021 the tenant indicates she is suffering from mental distress due to a computer hacker and she expresses her belief that the property manager does not do enough for the landlord but she does not expressly state what she wants the property manager and/or landlord to do. I find the vague complaints is insufficient to put the landlord on notice that the tenant is going to end the tenancy early due to a material breach of the tenancy agreement by the landlord. Therefore, I find the tenant did not bring the tenancy early under section 45(3) of the Act.

I heard that tenant testify that she attempted to book the elevator for March 31, 2021 on March 26, 2021 and I find the to be very late notice to expect the landlord to re-rent the unit for April 2021. I accept that the landlord undertook reasonable efforts to find a replacement tenant in a reasonable amount of time and for a reasonably economic rent.

In light of the above, I hold the tenant responsible for compensating the landlords for unpaid and/or loss of rent for April 2021 in the amount of \$1625.00, as claimed.

Move-out fee

Section 7(1)(f) of the Residential Tenancy Regulations permits a landlord to charge the tenant a move-out fee that is charged by the strata, as follows:

- 7 (1)A landlord may charge any of the following non-refundable fees:
- (f)a move-in or move-out fee charged by a strata corporation to the landlord;

Where a landlord is seeking to recover a move-out fee charged to the landlord by the strata, I would expect the landlord to provide evidence to corroborate the landlord's position that the landlord was charged a move-out fee so as to meet the applicant's

burden of proof. The landlord did not provide any such corroborating evidence. Therefore, I dismiss this claim due to insufficient evidence, without leave to reapply.

Filing fee, Security deposit and Monetary order

The landlords' claim had merit and I award the landlords recovery of the \$100.00 filing fee.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords with this decision.

In keeping with all of my findings and awards above, I provide the landlords with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – April 2021	\$1625.00
Filing fee	100.00
Less: security deposit	<u>(812.50)</u>
Monetary Order for landlords	\$ 912.50

Conclusion

The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order for the balance owing of \$912.50 to serve and enforce upon the tenant.

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: October 27, 2021

Residential Tenancy Branch