



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 21, 2021. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's application and evidence. The Tenant confirmed he did not serve his evidence to the Landlord. I find the Landlord sufficiently served the Tenant with their package. However, as stated in the hearing, the Tenant's evidence is inadmissible, as it has not been served to the Landlord in accordance with the Act and the Rules of Procedure.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord provided a copy of a tenancy agreement into evidence. However, this tenancy agreement is unsigned by the Tenant. The parties disagree on many aspects of the tenancy, and the tenancy agreement. However, both parties agreed that monthly rent was set at \$2,600.00 and was due on the first of the month and that the Landlord still holds a security and pet deposit, totalling \$2,600.00. The tenancy started at the end of December 2020, and ended on March 10, 2021, the day the parties met to do the move-out condition inspection and the day the Tenant moved out. No photos or condition inspection report were provided into evidence.

Although the Landlord initially filed an application for several items, they reduced the claim at the hearing to the following amounts and items:

1) \$2,600.00 – March Rent

The Landlord explained that the Tenant never gave proper written Notice to End Tenancy, and only sent them an email on March 1, 2021, saying that he would be moving out by the end of the month. A copy of this email was provided into evidence by the Landlord. The Landlord stated that the Tenant moved out even earlier than he said in his email, and moved out on March 10, 2021. The Landlord stated the Tenant never paid any rent for March, and owes \$2,600.00 for this item, given his short notice, and the fact he lived in the unit and never paid any rent for that month.

The Tenant acknowledged that he failed to pay rent for March, and stated that he initially tried to get the Landlord to retain his deposits in satisfaction of March rent, but the Landlord did not want to use the deposits in this manner.

2) \$1,300.00 – Rental loss from April 1-15, 2021

The Landlord explained that they were not able to re-rent the unit until April 15, 2021, and as such they suffered a loss of rent for the first half of April. The Landlord stated that they became aware that the Tenant wanted to move out at the end of March when he emailed them on March 1, 2021, but as this was an improper written notice, they waited until he vacated on March 10, 2021, to take steps to re-rent the unit. The Landlord stated he did not re-post the ad for rental unit because he thought he could rent it to a previous tenant of the building, who had showed some interest in living in the unit. The Landlord stated that they started talking with this previous tenant in early April,

and signed the new lease on April 15, 2021, for the same monthly rent. The Landlord stated the new Tenant moved in that same day, April 15, 2021.

The Tenant feels the Landlord could have re-rented the unit sooner, and they should have posted an ad online to get a tenant sooner.

3) \$75.00 – Keys

The Landlord stated that this is what it cost to have the locks and keys to the rental unit changed, after the Tenant vacated the rental unit on March 10, 2021, without returning the keys. The Landlord did not provide any supporting documentary evidence showing what was paid for this item.

The Tenant acknowledged that he left with the keys on March 10, 2021, as he had to leave the rental unit suddenly after an altercation with the Landlord at the move-out inspection. The Tenant disagreed with the contents of the report, and a dispute arose, whereby the Tenant asserts the Landlord's acrimonious behaviour caused him to leave the unit suddenly.

4) \$385.20 – COVID Deep cleaning

The Landlord explained that the Tenant failed to do any cleaning before he vacated the unit, and there was dog hair all over the floor, the bathroom was unclean, and the entire rental unit needed cleaning. The Landlord failed to provide any documentary evidence to support the condition of the rental unit at the start or the end of the tenancy.

The Tenant denies that he left the rental unit dirty. The Tenant asserts it was left at least as clean as when he arrived.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I will address the items in the same order as above.

I have reviewed the testimony and evidence with respect to March rent in the amount of \$2,600.00, and I find the Tenant failed to give proper written Notice. I turn to section 45 of the Act:

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) 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.

I find the Tenant breached section 45 of the Act by failing to give at least one month written notice to the Landlord. Further, the Tenant lived in the rental unit for part of March, and failed to pay any rent for this period of time. Although he tried to apply his security deposit to March rent, no formal agreement was reached. I find the Tenant is liable for March rent, in full, due to short and improper notice, and because he lived in the rental unit for part of the month. I award \$2,600.00 to the Landlord.

Next, I turn to the Landlord's claim for rent loss for the period from April 1-15, 2021, \$1,300.00. I note the following relevant portions of the *Policy Guideline #5 – Duty to Minimize Loss*:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

I note that the Tenant failed to give proper written Notice. However, I note he vacated the rental unit on March 10, 2021. It does not appear much was done by the Landlord prior to April to mitigate the potential rental loss for April. The Landlord stated they discussed renting the unit to a previous tenant starting in early April. However, this is nearly 3 weeks after the Tenant left. I also note the Landlord failed to re-post any

advertisement for the suite. I do not find the Landlord took sufficient steps to mitigate their lost rent for April, and I decline to award this item.

With respect to the next item, \$75.00 for key and lock replacement. I note the Landlord failed to provide any corroborating evidence regarding what this item cost. No invoices or receipts were provided. I find the Landlord failed to sufficiently demonstrate the value of their loss on this item, and it is dismissed in full.

With respect to the final item, cleaning costs. I find the Landlord failed to provide any documentary evidence showing the condition of the rental unit at the start or the end of the tenancy. I note there was an altercation at the move-out inspection, and the Tenant took the condition inspection report and the police were called. However, to support this application the Landlord could have provided a copy of the initial move-in report, and also could have taken and submitted photos at both the start or the end of the tenancy. The Tenant denies leaving the unit dirty as alleged. I find the Landlord has failed to sufficiently demonstrate that the unit was dirty, such that it warranted the above noted cleaning costs. I dismiss this item, in full.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was largely unsuccessful, I decline to award the recover of the filing fee. However, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following:

Item	Amount
March Rent	\$2,600.00
LESS: Security and Pet Deposit	\$2,600.00
Total Amount owing	\$0

Conclusion

The Landlord is authorized to retain the deposits (\$2,600.00) in full satisfaction of this claim. No further monetary order is required.

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 21, 2021