



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aquaterra Management Ltd dba Columbia Place
Apts and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent, and the tenant also attended. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the landlord indicated that the claim of \$15,215.00 is reduced to \$1,600.00 and recovery of the \$100.00 filing fee.

The tenant was not able to provide any evidence to satisfy me that the landlord was provided with any of the tenant's evidentiary material, and with the consent of the tenant, none of the tenant's evidentiary material is considered in this Decision. All of the evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on February 1, 2021 and was to revert to a month-to-month tenancy after January 31, 2022. However, the

tenant vacated the rental unit on May 29, 2021. Rent in the amount of \$1,600.00 was payable on the 1st day of each month, as well as \$80.00 per month for parking. On December 31, 2020 the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 216 units, and the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

Move-in and move-out condition inspection reports were completed by the parties at the beginning and end of the tenancy, and the landlord received the tenant's forwarding address in writing on May 29, 2021.

The landlord's agent further testified that a flood had occurred due to a water line and drain break and the tenant notified the landlord in a letter dated April 21, 2021. A copy has been provided for this hearing which indicates that it occurred several weeks prior. Back-ups had occurred prior and eventually the pipe burst. The landlord commenced repairs, including cleaning the carpet, but the tenant was not offered a different place to live because the landlord's agent believes the rental units were all full at that time. The tenant said it wasn't cleaned well enough according to health, safety and housing standards. The tenant said that it was not suitable for living conditions and may have mold. As a result, the tenant didn't pay any rent for the month of May, 2021.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2021 with an effective date of vacancy of May 15, 2021 for unpaid rent in the amount of \$1,680.00 that was due on May 1, 2021. A copy has not been provided for this hearing however the tenant did not dispute it.

The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit, but did apply for emergency repairs. The tenant didn't serve the landlord with a hearing package and a Decision was made in the absence of the landlord. The hearing date was on June 15, 2021, however the tenant moved out prior to the hearing, and the tenant withdrew the application.

The tenant testified that he moved in half-way through January, 2021, on or about the 16th with a friend helping, and they noticed a terrible stench. It was pretty bad and the tenant didn't know where it came from. The next day, the tenant noticed bubbling in the kitchen sink; the water line was backing up into the kitchen sink with contaminated water. The tenant called the manager in charge, and an agent of the landlord dumped Draino into the sink but didn't call a plumber. It was a temporary fix for a few weeks, but the tenant again heard bubbling and a terrible smell, and it backed up again. The

landlord's manager was called again, who again dumped more Draino into the sink. The third time it happened was a couple of months later, and again Draino was dumped into the sink by the landlord's agents. A few days later, on or about April 7, 2021 the water line in the wall broke and the tenant sent an emergency repair request to the landlord.

The landlord didn't give the tenant any information about where the tenant could go, but sent a plumber. The contaminated water sprayed all over the carpet, and there was grey water from the water line left on the carpet for several weeks. It just sat there and should have been removed.

The tenant sent 3 letters to the landlord. The first was notice dated April 21, 2021 that the landlord failed to comply with a material term due to the state of repair, and for the health, safety and housing standards. Multiple problems had not been addressed, and the letter said it was an emergency, but re-occurred. It also stated that there was only a temporary fix again and again, and no one cleaned the waste water. It also stated that the sink backed up again and the tenant was concerned of mold issues. The letter stated that the tenant was not offered a different place to stay and was ignored, and if the repairs were not corrected without further delay, the tenant would end the tenancy on a date to be determined, under Section 45(3).

The second letter was dated April 29, 2021 and was further notice to the landlord about terminating the tenancy if issues previously addressed were not resolved, and stated that the tenant would be moving out on June 1, 2021. It also stated that a repair man was brought in, who failed to comply with proper procedures with cleaning and disinfecting. It also states that the tenant spoke with a home inspector the same date as the letter and was told that the carpet should have been lifted, dehumidified, the underlay lifted and blowers put in place to extract the grey water contamination. The letter to the landlord also states that there is still grey water and the rental unit still has not been disinfected; the floor is green in the corner of the apartment, and the tenant did not believe there was even an attempt to clean it. The letter states that the tenant expects a full steam clean of the carpet area in the living room and the bedroom by April 31. The letter states that the tenant can no longer put up with it and it adds stress to the tenant's life, and the tenant will end the tenancy under Section 45(3).

The tenant's third letter was dated May 9, 2021 informing the landlord that the tenant will be moving out at the end of the month. It reiterates that the landlord has ignored the tenant's concerns, and that steam cleaning waste water or grey water is not acceptable to get rid of bacteria. The carpet needed replacing or properly extracted, and that no

one even came to look or do an inspection. Since it was not resolved in a timely fashion, the tenant would be moving out at the end of May and expected recovery of the security deposit.

The tenant further testified that he made a mistake on how to properly go about the dispute that the tenant filed to combat the landlord's application. The tenant didn't serve the landlord because he knew he messed up.

Because of COVID, the tenant couldn't stay; germs would remain in the sink and the tenant needed a safe place to live.

Analysis

The *Residential Tenancy Act* specifies that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. I accept that the tenant was confused in attempting to make a claim for emergency repairs, however the tenant gave notice to end the tenancy early and remained in the rental unit until May 29, 2021.

The tenant raised Section 45(3) of the *Residential Tenancy Act* in the letters to the landlord, which states:

45 (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.

The tenant's notice to the landlord to end the tenancy is effective June 1, 2021, and therefore is required to pay the rent for the month of May, 2021, and I grant a monetary order in favour of the landlord in the amount of \$1,600.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I find that the landlord has made a claim against the security deposit within the 15 days as required by the *Act*. I order the landlord to keep the \$800.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$900.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$800.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00.

This order is final and binding and may be enforced.

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: November 29, 2021

Residential Tenancy Branch