



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT (Tenant)
 MNRL-S, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenant filed the application May 09, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of the security and pet damage deposits
- For reimbursement for the filing fee

The Landlords filed the application May 13, 2021 (the “Landlords’ Application”). The Landlords applied as follows:

- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Tenant appeared at the hearing. The Agent for the Landlords (the “Agent”) appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Agent confirmed the correct Landlord names which are reflected in the style of cause.

At the hearing, the Tenant sought return of double the security and pet damage deposits.

At the hearing, the Agent advised that the Landlords are seeking \$825.00 and not the \$800.00 noted on the Landlords' Application because they are seeking half a month's rent and rent at the end of the tenancy was \$1,650.00 not \$1,600.00. The Tenant was okay with this amendment and therefore I allowed the amendment.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposits?
2. Is the Tenant entitled to reimbursement for the filing fee?
3. Are the Landlords entitled to recover unpaid rent?
4. Are the Landlords entitled to keep the security and pet damage deposits?
5. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started December 01, 2015 and was for a fixed term ending November 30, 2016. The parties agreed rent was \$1,650.00 at the end of the tenancy. Rent was due on the first day of each month. The Tenant paid a \$800.00 security deposit and \$500.00 pet damage deposit.

The parties agreed a second written tenancy agreement was completed during the tenancy. However, the parties agreed the second written tenancy agreement was not valid and therefore the first tenancy agreement outlined above carried on as a month-to-month tenancy.

The Tenant testified that they vacated the rental unit April 11, 2021. The Tenant could not point to further evidence to support this. The Agent testified that the Tenant vacated

the rental unit April 14, 2021. The Agent relied on a letter in evidence from the Tenant stating they would move out of the rental unit by April 14, 2021.

The parties agreed that the Tenant provided a forwarding address in writing to the Landlords April 28, 2021.

The parties agreed the Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlords keeping the security or pet damage deposits.

The parties agreed that a move-in inspection was not done and the Tenant was not offered two opportunities, one on the RTB form, to do a move-in inspection.

The Agent testified that the parties did not do a move-out inspection together and the Tenant was not offered a second opportunity to do a move-out inspection on the RTB form. The Tenant testified that a move-out inspection was not done and they were never provided an opportunity to do a move-out inspection.

The Agent acknowledged that the Landlords' claim is not related to pet damage.

The Landlords sought half of rent for April of 2021. The Agent testified that the Tenant asked to move out early and they told the Tenant full rent for April would have to be paid. The Agent testified that the Tenant then asked the Landlords for their April rent cheque back, which the Landlords provided, and the Tenant submitted a new cheque for half of rent for April. The Agent testified that the Landlords did not understand what was happening given a language barrier.

The Agent testified that they received notice ending the tenancy from the Tenant March 14, 2021. The Agent submitted that the Tenant ended the tenancy early and was not permitted to end the tenancy until the end of April. The Agent testified that the Tenant owed full rent for April but only paid half of rent for April.

The Tenant testified that they spoke with Landlord M.M. who had no issue with the Tenant providing notice March 14, 2021 for mid-April. The Tenant testified that Landlord M.M. agreed to return their April rent cheque and to accept a new rent cheque for half of April rent. The Tenant denied that Landlord M.M. did not understand what was happening. The Tenant also referred to a letter in evidence dated February 2021

about the Tenant's ability to end the tenancy. The Tenant submitted that they had both a verbal and written agreement with the Landlords about ending the tenancy early.

In reply, the Agent testified that the February 2021 letter in evidence states that the Tenant can end the tenancy with 30 days notice in accordance with the *Residential Tenancy Act* (the "*Act*") and that the Tenant's notice did not comply with the *Act*.

Both parties submitted documentary evidence which I have reviewed.

Analysis

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties about move-in and move-out inspections, I find the Tenant did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims for damage to the rental unit and the Landlords have claimed for unpaid rent.

Based on the testimony of the parties, I accept that the tenancy ended April 11, 2021 or April 14, 2021.

Based on the testimony of the parties, I accept that the Tenant provided a forwarding address in writing to the Landlords April 28, 2021.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlords had 15 days from April 28, 2021 to repay the security and pet

damage deposits or file a claim against them. The Landlords' Application was filed May 13, 2021, within time. I find the Landlords complied with section 38(1) of the *Act*.

However, Policy Guideline 31 addresses pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

The Landlords have not claimed against the pet damage deposit for pet damage as the only claim before me is for unpaid rent. Therefore, the Landlords were not entitled to keep the pet damage deposit and had to return the pet damage deposit within 15 days of April 28, 2021 pursuant to section 38(1) of the *Act*. The Landlords had not returned the pet damage deposit by November 05, 2021, the date of the hearing, and therefore did not comply with section 38(1) of the *Act* in relation to the pet damage deposit. Given this, and pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the pet damage deposit and must return double the pet damage deposit to the Tenant. The Landlords therefore must return \$1,000.00 to the Tenant. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy

agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline 16 deals with compensation for loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove they are entitled to recover unpaid rent. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Half of rent for April

There is no issue that the Tenant provided notice on March 14, 2021 ending the tenancy for mid-April as the parties agreed on this. Pursuant to section 45(1) and 53 of the Act, the March 14, 2021 notice would have been effective April 30, 2021. However, parties can agree to end a tenancy on a specified date and landlords can waive their right to receive rent.

The Tenant took the position that Landlord M.M. verbally agreed to the Tenant ending the tenancy mid-April and agreed to the Tenant paying half of April rent. The Agent acknowledged that the Landlords gave the Tenant back their April rent cheque but took the position that the Landlords did not understand what was happening due to a

language barrier. The Tenant disputed that Landlord M.M. did not understand what was happening.

I find the Tenant's version of events is supported by the fact that the Landlords returned their April rent cheque and accepted a new cheque for half of April rent. It does not make sense that the Landlords would return the Tenant's April rent cheque and accept a new cheque for half of April's rent unless they agreed to the Tenant ending the tenancy mid-April and only paying half of April rent. If the Landlords had not agreed to this, there would have been no reason for them to return the April rent cheque.

The parties disagreed about whether Landlord M.M. understood what was happening in relation to returning the April rent cheque. This is the Landlords' Application and their onus to prove. I did not hear from Landlord M.M. during the hearing. There is no statement from Landlord M.M. in evidence about what was agreed between them and the Tenant. The February 24, 2021 letter in evidence is from Landlord M.M.; however, it is dated prior to the Tenant giving notice and therefore I am not satisfied it represents Landlord M.M.'s position when the Tenant gave notice in March. In the circumstances, I am not satisfied the Agent's position has been proven.

Given the above, I am not satisfied based on the evidence provided that Landlord M.M. did not agree to the Tenant ending the tenancy for mid-April and the Tenant paying half of rent for April. The Tenant's position on this is supported by the testimony of both parties and the Agent's position on this is not supported by further evidence. In the circumstances, I am not satisfied the Landlords are entitled to recover half of rent for April. The claim is dismissed without leave to re-apply.

Filing fee – Tenant

Given the Tenant was successful in the Tenant's Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Filing fee – Landlords

Given the Landlords were not successful in the Landlords' Application, the Landlords are not entitled to reimbursement for the \$100.00 filing fee.

Summary

In summary, the Landlords must pay the Tenant the following:

- \$1,000.00 as return of double the pet damage deposit
- \$800.00 as return of the security deposit
- \$100.00 as reimbursement for the filing fee

The Tenant is issued a Monetary Order for \$1,900.00 pursuant to section 67 of the *Act*.

Conclusion

The Tenant is issued a Monetary Order for \$1,900.00. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it may be filed in the Small Claims division of the Provincial 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: November 09, 2021

Residential Tenancy Branch