



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirms that they received the Landlord application and notice of hearing but that there was no evidence in the package. It is noted that the only documentary evidence provided by the Landlord is a copy of the tenancy agreement. The Landlord confirms that the Tenant was never given a copy of this agreement.

Rule 3.14 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that evidence that is intended to be relied upon at the hearing must be received by the Respondent. Given the Landlord’s evidence that the Tenant was never provided with a copy of the written tenancy agreement, I decline to consider this document however I accept oral evidence of this agreement.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy agreement names two tenants with rent of \$1,200.00 payable on the first day of each month. The tenancy started on September 1, 2020 and ended on April 30, 2021. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. There is nothing in the tenancy agreement that sets out any guest or occupant restrictions. The Landlord received the Tenant's forwarding address on June 21, 2021. No rents are unpaid. The Landlord returned \$300.00 of the security deposit to the other tenant named in the tenancy agreement and has retained the remaining \$300.00.

The Landlord states that the Tenant had a guest, a fiancé, in the unit for the periods October 22 to November 9, 2021 and December 23, 2021 to January 15, 2021. The Landlord states that the utilities are included with the rent and that the guest created higher utility costs. The Landlord argues that the Tenant should pay extra rent and the Landlord claims \$600.00 in unpaid rent.

The Tenant states that her guest was only in the unit for three or four days in November 2021. The Tenant states that the fiancé was not a guest in December 2021 or January 2022 as the fiancé was out of town during this time.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. The Landlord has claimed unpaid rent however there is no evidence that the Tenant breached the tenancy agreement by failing to pay the monthly

rent required. There is nothing in the evidence of the tenancy agreement that restricts occupancy of the unit and the Landlord has not provided evidence of or made the argument that the guest was an occupant. There is nothing in the Act or tenancy agreement that provides for any compensation for the presence of a guest, and I note that section 39 of the Act requires that a landlord must not unreasonably restrict guests. There is no evidence that the guest caused any loss or extra utility costs in the amount of \$600.00. I also consider, given the Landlord's unsupported evidence and taking into account the Tenant's evidence, that the guest was only present for a couple of weeks. There is no evidence of any loss or damage from this brief stay. For these reasons I find that the Landlord has not substantiated any basis for its claim of \$600.00 and I dismiss this claim. As the claim was not successful, I find that the Landlord is not entitled to recovery of the filing fee and, in effect, the application is dismissed in its entirety.

As the Landlord still holds a remaining security deposit of \$300.00, I order the Landlord to return this \$300.00 plus zero interest to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: January 26, 2022

Residential Tenancy Branch