



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDCL-S, MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Agents of the corporate landlord and the tenant RN (the "tenant") attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. RN confirmed they do not represent the other named respondent CG. The agent LS (the "landlord") primarily spoke on behalf of the corporate landlord.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

Service was confirmed for the parties present. The tenant testified that they received the landlord's materials and had not served any evidence of their own. Based on the testimonies I find the tenant RN duly served in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served the respondent CG with the Notice of Hearing and materials by registered mail sent on September 17, 2021. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the tenant CG deemed served with the landlord's materials on September 22, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the deposits for this tenancy?
Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in September 2019. A different corporate entity is listed as the landlord in the documentary materials. The landlord explained that the corporate landlord changed its name since the start of the tenancy and the present applicant is the same as the entity listed on the tenancy documents. Originally both RN and CG were tenants under the tenancy agreement. CG subsequently vacated the rental unit and a new tenancy agreement commenced on September 1, 2020 with RN as the sole tenant. A copy of the tenancy agreement signed by the parties in 2020 was submitted into evidence.

The parties agree on the following facts. The monthly rent for this tenancy was \$1,600.00 payable on the first of each month. A security deposit of \$800.00 and pet damage deposit of \$300.00 were collected at the start of the tenancy and is still held by the landlord. Pursuant to the tenancy agreement the tenant is also responsible for paying a portion of the utilities for the property. Payment of rent and utilities was done through Interac e-transfer.

The landlord submits that they did not receive rent and utilities for the month of December 2020. The parties agree that the total amount due was \$1,688.00. The tenant submits that they initiated an e-transfer of that amount on November 22, 2020. The landlord says that the amount was never received and claims the funds were re-directed due to a weak password system. A copy of the confirmation screen showing the amount of \$1,688.00 as being "Deposited" on November 22, 2020 was submitted into evidence.

The parties agree that the tenant made a subsequent payment of \$833.59 on December 18, 2020. The tenant explained that they were informed by the landlord that the initial

payment of November 22, 2020 was stolen and offered the landlord approximately half the rent and utilities in order to mitigate their losses together.

The landlord submits that there was no agreement for the parties to bear the losses together and now seeks a monetary award in the amount of \$800.00 for unpaid rent. The landlord further submits that the tenant failed to pay the utilities for the tenancy as required and seeks a monetary award of \$347.68 for utility arrears.

The parties agree that no move-out condition inspection report was prepared at the end of the tenancy. The parties agree that there was a move-out inspection done together on May 27, 2021. The landlord testified that they felt concerned for their personal safety as they believed the tenant was acting in a hostile manner and concluded the inspection without preparing an inspection report. The landlord submits that subsequently they found the rental unit missing many of the items provided and in poor condition requiring considerable cleaning, maintenance and work.

Analysis

Section 36(2) of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if, having made an inspection with the tenant, they do not complete a copy of a condition inspection report in accordance with the regulations.

In the present case I accept the evidence of the parties that there was a move-out inspection on May 27, 2021. I find the landlord's testimony regarding their fear of personal safety and the conduct of the tenant to have little credibility. I do not find the landlord's claim that the tenant announced the fact that cutlery was missing in an aggressive and threatening manner to have any air of reality. I find no reasonable reason why the landlord failed to prepare an inspection report at this time as required under the *Act* and regulations. Even if the inspection was cut short due to the landlord's concerns, the landlord could have partially completed the report in accordance with the *Act*. The evidence before me is that the landlord did not prepare a move-out inspection at anytime, either together with the tenant or on their own at a subsequent time.

I find that the landlord failed to prepare a condition inspection report as required and pursuant to section 36(2)(c) have extinguished their right to claim against the security and pet damage deposit.

I therefore find that the landlord has extinguished their right to retain the deposits and the tenant is entitled to a monetary award in the amount of \$1,100.00, the full amount of the security and pet damage deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am not satisfied with the submission of the landlord that there is a rental and utility arrear for this tenancy attributable to the tenant. I find the testimony of the landlord that payment was not received in full to be contradicted in their own documentary evidence. The evidence submitted by the landlord clearly shows a payment of \$1,688.00 on November 22, 2020 with its status as "Deposited". The landlord confirmed that the email address used for the payment is their correct address for payment.

The tenant made payment in the agreed upon manner for payments throughout the tenancy. I find the landlord's testimony and correspondence with the tenant claiming non-payment to be insufficient to establish that there is a rental arrear when their own documentary evidence by way of the payment confirmation shows the funds as having been deposited.

Similarly, I find the landlord's evidence of non-payment of utilities consists of copies of the original bills from utility companies with handwritten calculations as to the amount payable by the tenant. I find the landlord's testimony and the limited documentary materials to be insufficient to establish on a balance of probabilities that the tenant has failed to pay these amounts.

The tenant gave testimony that they have paid all rent and utilities in full. The tenant's position is that there is no arrear for this tenancy. The tenant gave cogent, consistent testimony explaining the date and circumstances of all payments and how they calculate that there is no further rent or utility payable under the tenancy agreement.

I find insufficient evidence in support of the landlord's claim for the cost of items they say were missing from the rental unit or cleaning and maintenance. As noted above, the landlord has failed to prepare a proper condition inspection report at the end of the tenancy in accordance with the Act. In the absence of a report I find the landlord's disputed testimony, few photographs of the suite and a list of items and their cost to be insufficient to establish that there has been any damages or loss attributable to the tenancy.

The landlord is in the business of taking payment for rental units and they ought to be familiar with the requirements of the Act and regulations and conduct themselves in a professional manner accordingly. I find that the landlord has provided limited documentary evidence of records of payments and rental unit condition.

The onus is on the applicant to establish on a balance of probabilities the basis for their claim. I find the landlord's testimony, contradicted by their own documentary evidence, and the paucity of materials in support of their position to be insufficient to meet their onus. Accordingly, I dismiss the landlord's claim in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,100.00, representing the return of the full security and pet damage deposit for this tenancy. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: January 28, 2022

Residential Tenancy Branch