



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking the following relief:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- 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 and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenant agreed that the landlord may keep \$290.14 of the security deposit for the payment of utilities.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?

- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claims?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2020 and was to revert to a month-to-month tenancy after January 31, 2022, however the tenant vacated the rental unit on September 1, 2021. Rent in the amount of \$950.00 was payable on the 1st day of each month. On July 1, 2020 the landlord collected a security deposit from the tenant in the amount of \$475.00. A pet deposit was also paid in the amount of \$475.00, however the landlord returned the pet damage deposit during the tenancy because the tenant no longer had a pet. The landlord still holds the security deposit in trust. The rental unit is the main level of a home, and the landlord resided in the upper level during this tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant failed to pay rent in July, and after 3 days the tenant said that she was out of town and couldn't pay. The landlord was concerned about the tenant's well-being and testified that it was unlike the tenant to fail to pay rent. The tenant was upset that the landlord reached out to family and friends, and on July 3, 2021 told the landlord that she would vacate the rental unit by the end of July, 2021. No written notice was given.

The landlord was going to advertise the rental unit for rent, but had a friend wanting to move in, who moved in on September 1, 2021. The friend had to give a month's notice to vacate the previous tenancy.

The landlord claims 1 month of rent, or \$950.00.

The landlord also testified that the tenant left a couch on the rental property, and for removing it, the landlord is claiming the security deposit. No other damages are claimed.

The tenant testified that although a full month's notice wasn't given, the tenant told the landlord that the tenant had found people who would rent by August 1, 2021. The landlord replied that he was well aware that people were looking, but it was up to the landlord to find someone.

The tenant also testified that she had multiple reasons for ending the tenancy, including excessive noise from the landlord's suite, not getting along, and feeling uncomfortable.

The tenant was late with rent but the landlord didn't have to get ahold of the tenant's family and scare them.

The landlord told the tenant to leave the keys by July 31, 2021, so paying rent for August didn't make sense.

When the tenant first moved into the rental unit, the door of the rental home had to be removed in order to get the couch in, which was done by the landlord at that time. The tenant did not ask the landlord to remove the door at move-out.

Analysis

Firstly, a landlord is required to prove mitigation when claiming loss of rent or rental revenue by advertising a rental unit for rent as reasonably soon as possible after learning that a tenant is vacating the rental unit. In this case, the landlord did not dispute the tenant's testimony that the tenant told the landlord that there were tenants that could have rented, but the landlord replied that he was well aware of that but it was up to the landlord to find someone to move in. If the landlord had advertised, it is very possible that there would have been no loss of rental revenue to the landlord. However, the landlord "held out" for a friend to rent the rental unit and claims unpaid rent from the tenant. That is not mitigation, and I dismiss the landlord's application for unpaid rent.

The landlord testified that the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement refers to a couch left on the property by the tenant at the end of the tenancy. However, the landlord's application shows that the application refers to unpaid utilities, which the tenant has agreed to pay.

The landlord testified that the tenant left a couch on the property, but has not provided any evidence of a cost to remove it, and no other damages are claimed. The landlord has not established that moving the couch resulted in any cost to the landlord. Therefore, I dismiss the landlord's application for a monetary order for damage to the rental unit or property.

The tenant does not dispute the unpaid utility bills, and agreed that the landlord may keep \$290.14 from the \$475.00 security deposit held in trust.

A landlord must return a security deposit or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the tenant does not provide a forwarding

address in writing within a year after the tenancy ends, the landlord may keep the deposit(s). In this case, the landlord has not received a forwarding address in writing. If the tenant provides a forwarding address in writing, the landlord will have 15 days to return the balance of the security deposit to the tenant.

Since the landlord has not been successful with the application, other than with the consent of the tenant regarding utilities, I decline to order that the landlord recover the filing fee from the tenant.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent is hereby dismissed.

The landlord's application for a monetary order for damage to the rental unit or property is hereby dismissed.

I order that the landlord may keep \$290.14 from the security deposit held in trust for unpaid utilities, and must return the balance of the \$475.00 security deposit to the tenant within 15 days of receiving the tenant's forwarding address in writing.

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 20, 2022

Residential Tenancy Branch