



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORMA GROUP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 10, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage
- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

D.A. appeared at the hearing for the Landlord. Tenant J.A. (the “Tenant”) appeared at the hearing and appeared for Tenant D.A. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

In relation to the request for compensation for damage, the Landlord did not submit a Monetary Order Worksheet or outline of amounts sought with a basis for each amount. The Application simply shows that the Landlord is seeking a total of \$720.00 for numerous issues. Further, the Landlord did not submit invoices or receipts which may have assisted in determining what the \$720.00 sought is based on.

Rule 2.5 of the Rules states:

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

(emphasis added)

Given the absence of detail regarding the request for compensation in the amount of \$720.00, I dismiss this request with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The only documentary evidence submitted for this matter was the tenancy agreement between the parties which was submitted by the Landlord. The Tenant confirmed receipt of the hearing package and did not raise an issue with service. The Tenant confirmed they have a copy of the tenancy agreement.

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

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$1,500.00 on the following basis:

The tenant moved out 3 days after the end of the tenancy. Causing delays with shows and left such a mess restricting us to rent the unit.

The parties agreed the written tenancy agreement submitted is accurate. The tenancy started August 01, 2021 and was for a fixed term ending July 31, 2022. Rent was \$1,500.00 due on the first day of each month. The Tenants paid a \$750.00 security deposit.

The parties agreed the tenancy ended November 30, 2021.

The parties agreed the Tenants have not provided the Landlord with a forwarding address in writing.

D.A. acknowledged the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security deposit.

D.A. testified that both parties, or their agents, did move-in and move-out inspections. The Tenant disagreed and testified that no move-in or move-out inspections were done.

D.A. testified as follows in relation to the request for \$1,500.00, one month of unpaid rent. The tenancy ended by mutual agreement between the parties which was reached at the beginning of November. The parties agreed the Tenants would move out December 01, 2021. The Tenants moved out of the rental unit three days late. The Tenants were supposed to leave the unit in the same condition as when they received it at the start of the tenancy. The Tenants left the unit in an unacceptable condition with garbage everywhere. The Landlord posted the unit for rent November 15, 2021. The Landlord has not been able to re-rent the unit. The Landlord decided to completely renovate the whole unit. The unit is still vacant.

The Tenant testified as follows. The Tenants signed a mutual agreement with the Landlord November 3rd or 4th to end the tenancy December 01, 2021. The Tenants moved out of the rental unit December 04, 2021 because the Landlord said this was okay. The Tenant does not know if the Landlord posted the unit for rent November 15, 2021 or if the unit is still vacant.

In reply, D.A. denied that the Landlord agreed to the Tenants moving out December 04, 2021.

Analysis

Security deposit

Section 38(1) of the *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The parties agreed the Tenants have not provided the Landlord with a forwarding address in writing and therefore I find section 38(1) of the *Act* has not been triggered and the Landlord was entitled to claim against the security deposit when the Application was filed.

Compensation

The Landlord has sought to recover unpaid rent; however, the claim is really for overholding compensation and loss of rent which I have considered because the basis for the claim is clear in the Application.

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.

Policy Guideline 16 deals with compensation for damage or 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.

Section 57(3) of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I accept that the parties signed a mutual agreement ending the tenancy for December 01, 2021 because the parties agreed on this. I do not accept that the Landlord was fine

with the Tenants moving out December 04, 2021 because the parties did not agree on this and there is no documentary evidence before me to support this. I would expect such an agreement to be in writing given the parties agreed there was a mutual agreement in place ending the tenancy December 01, 2021.

I find the tenancy ended December 01, 2021 pursuant to section 44(1)(c) of the *Act*.

The Tenant acknowledged the Tenants did not move out of the rental unit until December 04, 2021 and therefore I find the Tenants overheld the unit by three days. I find the Landlord is entitled to the equivalent of three days of rent pursuant to section 57(3) of the *Act*. I calculate three days of rent to be as follows:

$$\$1,500.00 \times 12 \text{ months} = \$18,000 / 365 \text{ days} = \$49.31 \times 3 \text{ days} = \$147.93$$

The Landlord is entitled to \$147.93.

In relation to the additional loss of rent claimed, D.A. testified that the Landlord tried to re-rent the rental unit November 15, 2021, the Tenants left the unit in an unacceptable condition and the Landlord has not been able to re-rent the unit. However, the Landlord did not submit any supporting evidence in relation to these points. In the absence of further evidence, I am not satisfied the Landlord has proven they are entitled to further compensation for loss of rent and dismiss this request without leave to re-apply.

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$247.93 and can keep this from the security deposit pursuant to section 72(2) of the *Act*. The remaining \$502.07 must be returned to the Tenants and the Tenants are issued a Monetary Order for this amount.

Conclusion

The Landlord is entitled to \$247.93. and can keep this from the security deposit. The remainder of the security deposit must be returned to the Tenants and the Tenants are issued a Monetary Order for this amount. If the Landlord does not return the \$502.07 to the Tenants, this Order must be served on the Landlord. If the Landlord fails 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: February 22, 2022

Residential Tenancy Branch