



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL (Landlord)
 MNSD, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed their application June 14, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Tenant filed their application July 23, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of the security deposit
- For reimbursement for the filing fee

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties. 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.

At the hearing, the Tenant advised that they are seeking return of double the security deposit.

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 the documentary evidence and all oral testimony of the parties. 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 compensation for monetary loss or other money owed?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to return of double the security deposit?
5. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

Tenant's Application

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 12, 2021 and was for a fixed term ending December 31, 2021. Rent was \$1,800.00 per month due on the first day of each month. The Tenant paid a \$900.00 security deposit.

I asked the parties at the start of the hearing when the Tenant moved out of the rental unit and both parties agreed June 14, 2021.

The parties agreed the Tenant provided the Landlord with a forwarding address June 14, 2021.

The parties agreed the Landlord was issued a Monetary Order for March rent on File 394. The parties agreed the Tenant has paid the Landlord for March rent. The Tenant testified that they paid March rent June 24, 2021 and the Landlord testified the Tenant paid March rent July 06, 2021.

The Landlord stated that they are currently seeking the following unpaid rent:

- \$1,800.00 for April
- \$1,800.00 for May
- Pro-rated rent for June 01 – 14, 2021

The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord testified that the parties did a move-in inspection but no Condition Inspection Report was completed. The Tenant testified that no move-in inspection was done and the Landlord declined to do an inspection.

The Landlord testified that a move-out inspection was not done and the Tenant agreed no move-out inspection was done.

Landlord's Application

The Landlord sought the following compensation:

Item	Description	Amount
1	April rent	\$1,800.00
2	May rent	\$1,800.00
3	June rent (1 st – 10 th)	\$600.00
4	Utilities	\$93.34
5	Filing fee	\$100.00
	TOTAL	\$4,393.34

Unpaid rent April, May and June (1st – 10th)

The Landlord testified that the Tenant did not pay rent for April, May or June and that the Landlord only found out June 01, 2021 at a prior hearing that the tenancy had ended.

The Tenant testified as follows. They agree they did not pay rent for April, May or June. At the start of the tenancy, the Landlord broke into the rental unit and assaulted the Tenant. The Landlord broke the toilet when they assaulted the Tenant. They did not live in the rental unit because they were concerned for their personal safety. The rental

unit was not in a liveable condition and the evidence shows there were bugs, cobwebs and dirt in the rental unit.

The Tenant testified that they did not give the Landlord written notice ending the tenancy. The Tenant testified that they did not tell the Landlord they were moving out. The Tenant testified that they had the key to the rental unit until June 14, 2021.

Utilities

The Landlord testified that there are outstanding utility usage charges that the Tenant is required to pay.

The Tenant agreed they owed for utilities pursuant to the tenancy agreement and did not pay for utilities. The Tenant testified that the Landlord had access to the rental unit. The Tenant testified that they did not live in the rental unit.

The Landlord submitted the following relevant evidence:

- Bank account transaction history
- Prior RTB decision on File 394
- Utility usage charts
- Payment record for utilities
- Tenancy agreement
- Video

The Tenant submitted the following relevant evidence:

- Invoices for accommodation
- Photos and text messages
- Typed statement
- Documentation about the Landlord being charged with assault and pleading guilty to this
- Emails
- Video

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Tenant's Application

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit 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 a security deposit at the end of a tenancy.

Based on the testimony of both parties in relation to move-in and move-out inspections, I find this is not a situation where the Landlord offered the Tenant two opportunities, one on the RTB form, to do these inspections and the Tenant failed to participate and therefore I find the Tenant did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid rent and utilities, not for damage to the rental unit.

I find the tenancy ended June 14, 2021 for the following reasons. The parties agreed at the start of the hearing that the tenancy ended June 14, 2021. The Tenant submitted an email dated June 14, 2021 stating, "Please note that I have cleared out...the unit and left the key under the door." I find this email shows that the Tenant remained in possession of the rental unit until June 14, 2021. The Tenant acknowledged at the hearing that they had the key to the rental unit until June 14, 2021 which also supports that the Tenant remained in possession of the rental unit until June 14, 2021.

Based on the testimony of both parties, I accept that the Tenant provided the Landlord with a forwarding address June 14, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. The Landlord's Application was filed June 14, 2021, within time. I find the Landlord complied with section 38(1) of the *Act* and therefore the Tenant is not entitled to return of double the security deposit pursuant to section 38(6) of the *Act*.

Landlord's Application

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...

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 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.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

Based on the tenancy agreement, I find the tenancy started January 12, 2021 and that the Tenant was required to pay \$1,800.00 in rent per month by the first day of each month.

As stated above, I find the tenancy did not end until June 14, 2021 because I find the Tenant remained in possession of the rental unit until this date. Whether the Tenant themselves lived in the rental unit until June 14, 2021 or not is not relevant because the Tenant had possession of the rental unit. The Tenant could only end the tenancy in accordance with section 45 of the *Act* which required written notice ending the tenancy. The Tenant acknowledged they did not give the Landlord written notice ending the tenancy. Further, the Tenant acknowledged they did not notify the Landlord verbally that they were moving out of the rental unit. In the circumstances, I find the Tenant was responsible to pay rent from January 12, 2021 to June 14, 2021.

I find the Tenant did not pay rent for April, May or June of 2021 because the parties agreed on this.

The Tenant did not point to any authority under the *Act* to withhold rent.

I note that, if the Tenant believed they were entitled to compensation or to withhold rent for a reason not outlined in the *Act*, the Tenant was required to pay rent and seek a remedy through the RTB. The Tenant did not do so.

I also note that the evidence, including photos and a video, do not support that the rental unit was not in a liveable condition. At most, the evidence shows the rental unit required some cleaning.

Given the above, I find the Tenant owes the Landlord rent for April, May and June 1 – 14, 2021. I award the Landlord \$4,428.49 (\$1,800.00 for April, \$1,800.00 for May and \$828.49 for June 1 – 14, 2021).

Utilities

I accept that the Tenant owed for utilities during the tenancy because the parties agreed on this.

I accept that the Tenant did not pay the utilities owing during the tenancy because the parties agreed on this.

I find the Tenant is responsible to pay for utility charges incurred while the Tenant remained in possession of the rental unit from January 12, 2021 to June 14, 2021.

If the Tenant is suggesting that the Landlord accessed the rental unit and incurred the utility charges, I am not satisfied this occurred because the Tenant remained in possession of the rental unit until June 14, 2021 and there is no compelling evidence before me that the Landlord did so.

I find the Tenant owes the Landlord \$93.34 for unpaid utilities and award the Landlord this amount.

Filing fees

Both parties sought reimbursement for the filing fee. The Tenant has not been successful in their application and therefore is not entitled to reimbursement for the filing fee. The Landlord has been successful in their application and therefore is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	April rent	\$1,800.00
2	May rent	\$1,800.00
3	June rent (1 st – 14 th)	\$828.49
4	Utilities	\$93.34
5	Filing fee	\$100.00
	TOTAL	\$4,621.83

The Landlord can keep the \$900.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$3,721.83 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$4,621.83. The Landlord can keep the \$900.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$3,721.83. This Order must be served on the Tenant. If the Tenant 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 04, 2022

Residential Tenancy Branch