



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDL-S, MNDCL-S, MNRL-S, FFL**
 TT: MNSDB-DR, FFT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The corporate landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain the deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant named the corporate landlord and the personal respondent and applied for:

- authorization to obtain a return of all or a portion of the deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The named landlords were both represented by an agent (the “landlord”). The tenant was assisted by a family member.

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.

As both parties were present service was confirmed. The parties each testified that they received the respective materials. The landlord questioned whether they have received the full materials from the tenant but confirmed they were duly served. Based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act* and in any event have been sufficiently served with the materials in accordance with section 71(2)(c).

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to the deposit for this tenancy?

Is either party entitled to recover the filing fee from the other?

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.

The parties agree on the following facts. This fixed-term tenancy began on December 15, 2020 and was scheduled to end on December 14, 2021. Monthly rent was \$2,100.00 payable on the 15th of each month. A security deposit of \$1,050.00 and pet damage deposit of \$1,050.00 was collected at the start of the tenancy and are still held by the landlord. The parties participated in a move-in and move-out inspection and prepared a condition inspection report.

The tenant gave written notice to end the tenancy by an email dated August 14, 2021 with an effective date of September 1, 2021. The parties completed a move-out inspection on September 7, 2021. The tenant provided a forwarding address on that date. The parties disagreed on the assessment of the condition of the rental unit and the tenant did not agree to any deductions from their deposits.

The landlord filed an application for dispute resolution on September 13, 2021 seeking a monetary award of \$5,006.00.

The landlord submits that the tenant failed to return a parking pass and two FOBs issued to them and seeks the cost of their replacement of \$150.00. The tenant agrees with this portion of the landlord's claim.

The landlord says the rental unit required cleaning and work due to numerous patches on the walls and submits that the cost of their work and estimated further work is \$2,756.00. The landlord testified that they have not incurred any costs as the painting work has not been done. The landlord submitted into evidence an estimate from a third-party painting company for \$2,456.00 to prepare and paint the whole rental suite.

The landlord further claims the unpaid rent that was payable on September 15, 2021 of \$2,100.00 and submits that the tenant gave insufficient notice and ended the fixed-term tenancy prior to its term and the landlord suffered losses as a result. The landlord testified that they have found another occupant to take possession of the rental suite as of October 1, 2021 but they were only able to rent at a lesser amount.

The tenant disagrees with the landlord's assessment of the rental unit at the end of the tenancy and that any cleaning or repairs was necessary. The tenant notes that the rental unit contained deficiencies at the start of the tenancy as noted on the inspection reports.

The tenant submits that the rental unit contained multiple issues and the landlord failed to provide services or facilities which gave rise to their right to end the fixed-term tenancy. The tenant further submits that they were authorized to end the tenancy early in an email correspondence from the landlord. A copy of the correspondence dated January 4, 2021 was submitted wherein the assistant to the property manager relays that the manager stated, "because it will be under insurance claim, it may take some time to renovate the floor - however we will try our best to contact Insurance company to finish it ASAP For your compensation you may claim under your tenant's insurance, if you wish to move out no charges will apply, or again we can offer you that available unit".

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

In the present case the parties provide that the tenants gave a forwarding address in writing on the condition inspection report completed on September 7, 2021 and filed

their application on September 13, 2021. As such, I find the landlord was within the statutory timeline to file their application for authorization to retain the deposit.

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.

The parties agree that the tenant failed to return a parking pass and FOB at the end of the tenancy. The parties agree that the cost of replacement of these items is \$150.00. Accordingly, I issue a monetary award in the landlord's favour for this amount.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenant gave notice to the landlord to end the tenancy on August 14, 2021. The tenant submits that they were authorized to end the fixed term tenancy by the email correspondence of January 4, 2021.

While I find the correspondence permitted the tenant to end the fixed-term tenancy at that time due to the need for renovations of the floor with no penalties, I find insufficient evidence that the offer was active on August 14, 2021 when the tenant ultimately ended the tenancy. The evidence of the parties is that after the offer of the landlord to permit the tenant to end the tenancy in January 2021, the tenancy continued with the tenant paying the monthly rent as required under the agreement. I find it reasonable that the

landlord would rely upon this conduct of the tenant to believe the tenancy was continuing. I find the tenant is estopped, through their conduct, from relying upon the earlier correspondence to end the fixed-term tenancy before its term.

Based on the evidence, while I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated that the loss incurred are due to the tenant rather than the landlord's own failure to take steps to mitigate their losses. The landlord submits that they were eventually able to find a new occupant to commence on October 1, 2021 at a lesser monthly rent. I do not find it reasonable, given the state of the rental housing market, that the landlord was not able to find a new occupant after being provided a month's notice.

The landlord provided little evidence of the steps they took, how they sought a new occupant for the rental unit, where they advertised or correspondence and negotiations with prospective tenants. The landlord claims the new occupant is paying a lower monthly rent but has failed to provide a tenancy agreement to support this claim nor did they provide cogent testimony as to how the new monthly rent was negotiated. Based on the paucity of the landlord's evidence I am not satisfied that they took reasonable steps to mitigate their losses. I find that any loss suffered by the landlord due to the early breach of the tenancy agreement is not attributable to the tenant, but the landlord's failure to take reasonable steps. Consequently, I dismiss this portion of the landlord's claim.

The landlord seeks a monetary award of \$2,756.00 for cleaning costs and painting of the rental unit. The landlord confirmed they have not incurred the costs of painting. The landlord did not provide invoices or calculations to show how they have arrived at the amount of \$300.00 for cleaning services.

Regulation 21 provides that a condition inspection report is evidence of the state of repair and condition of the rental unit, unless there is a preponderance of evidence to the contrary.

The condition inspection report submitted into evidence notes some holes in the walls at the start of the tenancy and states that there has been some patching of walls at the end of the tenancy. The landlord also provided some photographs of the suite and the portions of the walls that were patched.

I note that the condition inspection report notes that the holes in the walls at the start of the tenancy has now become patched walls. It appears that the tenant, during the tenancy, repaired the multiple holes on the walls of the rental unit noted on the inspection report by patching them. If there is a need to paint and repair the walls of the rental unit, it arises not from the tenant's repairs but from the pre-existing holes which the tenant patched.

In any event, I find the landlord has not met their evidentiary burden to establish this portion of their monetary claim as their evidence is that they have not incurred any costs for painting as they have not commissioned painting and instead rented out the suite to a new occupant as is. I further find insufficient evidence of any cost of cleaning at the end of the tenancy. I find insufficient evidence that the landlord incurred and losses or damages attributable to the tenancy and consequently dismiss this portion of the application.

As the tenant was more successful in their application, I allow the tenant to recover their filing fee from the landlord.

I authorize the landlord to retain \$50.00 of the security and pet damage deposit for this tenancy and order the return of the balance of \$2,050.00 to the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,050.00, representing the return of the security and pet damage deposit for this tenancy and their filing fee, less the amount payable to the landlord for the replacement of parking pass and FOB. The landlords must be served with this Order as soon as possible. Should the landlords 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: April 28, 2022

Residential Tenancy Branch