



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on September 28, 2021 for:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on October 24, 2021 for:

1. An Order for the return of the security deposit - Section 38; and
2. A Monetary Order for compensation - Section 67.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm their exchange and receipt of the Parties evidence packages.

Issue(s) to be Decided

Is the Tenant entitled to compensation?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement was signed on August 20, 2021 for a September 15, 2020 start date. Rent of \$1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$800.00. The Tenant was given access to the unit earlier than this date. No move-in inspection with a report was conducted. On September 15, 2021 the Tenant notified the Landlord that they were moving out of the unit and on September 16, 2021 they moved out of the unit. No rent was paid for September 2021. The Landlord received the Tenant's forwarding address on September 19, 2021.

The Landlord states that while the Parties did conduct a mutual walkthrough of the unit no move-in inspection report was completed. The Tenant states that no move-in walkthrough was done. The Tenant states that they had viewed the unit from a video the Landlord provided to the Tenant.

The Landlord states that the Tenant was allowed to move into the unit on September 4, 2021 and that the Landlord chose not to collect the \$800.00 in rent for the unit at the time as the Landlord wanted to give the Tenant time for the move-in. The Landlord submits that a new tenant was found for October 1, 2021. The Landlord claims \$800.00 in unpaid rent.

The Tenant states that the unit was a mess when they started to move into it. The Tenant states that they had the unit cleaned and claims the costs of \$489.51. The Tenant provides an invoice dated September 10, 2021 for this amount. The Tenant states that the Landlord was not informed of this deficiency or given opportunity to remedy the deficiency.

The Tenant states that the Landlord failed to provide a unit that was move-in ready because the toilet was not working, and doors had been painted over causing them to not close. The Tenant states that on the first overnight stay at the unit on September 14, 2021 and in the middle of the night, the toilet flooded causing a leak into the lower part of the unit. The Tenant states that the Landlord was immediately informed and came to the unit on September 15, 2021. The Tenant states that when asked the Landlord stated that they intended to use dryers to repair the affected part of the unit. The Tenant states that they moved out of the unit before the Landlord made any repairs. The Tenant claims \$1,000.00 for moving costs. The Tenant provides photos.

The Landlord states that the unit was clean with new flooring and fresh paint when it was given to the Tenant. The Landlord states that the Landlord would have cleaned the unit if the Tenant had asked for cleaning. The Landlord states that the Tenant informed the Landlord on September 14, 2021 at 9:23 p.m. of a leak and overflow with the toilet constantly running. The Landlord states that the Tenant was told to turn it off for the night. The Landlord states that the toilet was repaired on September 15, 2021. The Landlord states that the toilet seal was gone. The Landlord states that the Tenant never told the Landlord of any problems from the time the Tenant had access to the unit until the reported leak and that they only moved out. The Landlord states that the toilet was a quick repair.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Tenant's evidence that the Landlord was not informed that the unit was not reasonably clean at move-in I find that

the Tenant did not take any steps to minimize their loss. I therefore dismiss the Tenant's claim for cleaning costs.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

There is no evidence that the unit was uninhabitable, only that it was not "move-in ready". There is evidence that a flood occurred after the Tenant's took occupancy of the unit however it is undisputed that the Landlord acted immediately to repair the leaking toilet. I accept the Landlord's undisputed evidence that the Tenant did not inform the Landlord of any deficiencies until the flood. For these reasons, I find that the Tenant has not substantiated that the Landlord breached the Act or tenancy agreement or that the Tenant took steps to mitigate the deficiencies from not being "move-in ready". The Tenant is therefore not entitled to compensation for moving out of the unit and I dismiss the claim for moving costs.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address on September 19, 2022, and as the Landlord made its application to claim against the security deposit within 15 days of this date, I find that the Tenant is not entitled to return of double the security deposit. As neither of the Tenant's claims have been successful, I find that the Tenant is not entitled to recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed facts that the Parties signed a tenancy agreement for monthly rent of \$1600.00 with the payment of the security deposit I find that there was a valid tenancy agreement. As no rent was paid for September 2022, I find that the Landlord has substantiated an entitlement to **\$800.00**. As the Landlord has been successful with their claim, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$900.00**. Deducting the security deposit plus zero interest of **\$800.00** from this amount leaves **\$100.00** owed to the Landlord.

Conclusion

The Tenant's application is dismissed.

I order that the Landlord retain the **deposit** and interest of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$100.00**. If necessary, this order may be filed in the Small Claims 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: April 27, 2022

Residential Tenancy Branch