



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to

make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Security Deposit

JG did not specifically indicate that he was wanting to keep the deposit on his application, but he did confirm at the hearing he was seeking to keep it. The tenants also agree that the issue of the security deposit should be addressed in this hearing. Pursuant to Section 64(3)(c) I amend the application to include the issue of the security deposit.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

JG gave the following testimony on behalf of the landlords. The tenancy began on November 20, 2020 and ended on December 30, 2021. The tenants were obligated to pay \$1800.00 per month in rent and at the outset of the tenancy the tenants paid a \$900.00 security deposit which the landlord still holds. JG testified that written condition inspection reports were done at move in and move out. JG testified that the tenants gave short notice to end their tenancy.

JG testified that they only sent a text message on December 7, 2021 that they would be moving out by the end of the month. JG testified that the tenants left the unit dirty and damaged at move out. JG testified that the tenants left furniture behind that is still unclaimed. JG testified that he is seeking \$1800.00 for the loss of rent for January 2022 due to short notice, \$248.04 for cleaning that wasn't done in the unit, \$976.74 for storage fees of the unclaimed items and \$100.00 for the filing fee for this application.

MO gave the following testimony on behalf of the tenants. MO testified that she and the landlord verbally agreed to end the tenancy on October 23, 2021. MO testified that the landlord was aware that they would be moving out at the end of December. MO testified that the landlord did the move out inspection on December 30, 2021, one day earlier than expected yet the report states nothing about improper cleaning. MO testified that the landlord took their items without their permission and still has not returned them.

Analysis

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Loss of Rent

I find that the landlord and tenants entered into a fixed term tenancy for the period from November 20, 2020 to October 31, 2021 which then became a month to month tenancy. Both parties signed the written tenancy agreement, and a copy was provided for this hearing.

Subsection 45(1) of the *Act* sets out how a tenant may end a periodic tenancy:

- 45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a)is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that the tenants cannot give notice to end the tenancy earlier than one month after the landlord receives the notice and which is one day before rent is paid, which in this case the rent is due on the 1st of each month. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on December 7, 2021, less than a full month as required and noted above. I find that the tenants breached the above section. As such, the landlord may be entitled to compensation for losses it incurred because of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for January 2022 rent loss of \$1,800.00, without leave to reapply. I find that the landlord failed to provide sufficient documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, if flexible terms were given or incentives and when they were done.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

Cleaning costs

I dismiss the landlord's claims for \$248.04 total for cleaning and materials, without leave to reapply. The landlord testified that the parties agreed to do the condition inspection report on December 30, 2021. The report lacks any notation of cleaning required. The landlord's documentation is insufficient to be granted this portion of their claim.

Storage Fees

The landlord is seeking \$976.74 for a claim that is a result of him keeping items without the consent of the tenants. As the landlord has not incurred any actual costs, I dismiss this portion of his application without leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I order that the landlord return the \$900.00 security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$900.00. 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 *Residential Tenancy Act*.

Dated: August 22, 2022

Residential Tenancy Branch