



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 February 08, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- To keep 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.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. 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 \$1,400.00 for loss of rent for February of 2022 and \$38.00 for gas, hydro and internet.

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started December 23, 2021, and was for a fixed term ending April 30, 2022. Rent was \$1,400.00 per month due on the first day of each month. The Tenant paid a \$700.00 security deposit.

The Landlord testified that the tenancy ended January 27, 2022. The Tenant testified that they moved out of the rental unit January 25, 2022.

The Tenant testified that they provided their forwarding address to the Landlord in writing by email January 27, 2022. The Landlord testified that they received the Tenant's forwarding address January 29, 2022, by email. The Landlord took issue with the method of service used by the Tenant.

The parties agreed on the following. The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. 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 parties did a move-in inspection together. The parties did not do a move-out inspection together and the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection.

The Tenant agreed to pay the Landlord \$38.00 for utilities owing.

In relation to loss of rent for February, the Landlord testified as follows. The tenancy was for a fixed term ending in April of 2022. The Tenant said a leak occurred in the rental unit at the start of the tenancy. The Tenant moved out of the rental unit prior to the end of the fixed term. The only written notice the Landlord received of the Tenant moving out was an email received January 29, 2022, in which the Tenant told the Landlord they had already moved out. The Tenant had previously asked over text message if they could move out early and the Landlord told them they could not.

The Landlord further testified as follows. The rental unit was posted for rent immediately after the Tenant moved out. The posting is in evidence. The rental unit was re-rented for the end of February or beginning of March for \$1,400.00 in rent.

The Tenant testified as follows. The Tenant had verbal discussions with the Landlord about moving out of the rental unit leading up to January 25, 2022. The first written notice the Tenant provided to the Landlord about moving was the January 25, 2022 email which the Landlord responded to January 27, 2022. In the January 25, 2022 email, the Tenant told the Landlord they had moved out. The Tenant did not provide the Landlord with written notice of the Landlord breaching a material term of the tenancy agreement. Notice of a breach had only been provided verbally to the Landlord. The Tenant did not pay February rent. The Tenant believes the Landlord re-rented the unit for February 01, 2022, because the lights were on when the Tenant went by the unit.

The Landlord submitted the email correspondence between the parties from January and the rental posting for the unit.

The Tenant submitted email correspondence between the parties from January.

Analysis

Pursuant to sections 24 and 36 of the *Residential Tenancy Act* (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 the parties, I find the Tenant participated in the move-in inspection. Based on the testimony of the parties, I find the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection. In the circumstances, I find the Tenant did not extinguish their rights in relation to the security deposit pursuant to 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 pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and here the Landlord is not claiming for damage to the rental unit.

Based on the emails in evidence, I find the Tenant moved out of the rental unit January 25, 2022.

Based on the emails in evidence, I find the Tenant provided their forwarding address in writing to the Landlord January 27, 2022. Based on the emails in evidence, I find the Landlord received the Tenant's email January 27, 2022, because the Landlord responded to it. I do not accept that the Landlord can dispute the method of service used by the Tenant, email, when the Landlord received the email. I find the forwarding address was sufficiently given to the Landlord January 27, 2022, pursuant to section 71(2) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from January 27, 2022, to repay the security deposit or file a claim with the RTB against the deposit. The Application was filed February 08, 2022, within time. I find the Landlord complied with section 38(1) of the *Act*.

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 45(2) and (3) of the *Act* state:

(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives **written notice** of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Policy Guideline 08 deals with ending a tenancy for breach of a material term and states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – **must inform the other party in writing**:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The tenancy agreement was for a fixed term ending April 30, 2022. The Tenant ended the tenancy January 25, 2022. The Tenant did not provide the Landlord written notice of a breach of a material term of the tenancy agreement and therefore did not have authority under the *Act* to end the tenancy early. I find the Tenant breached the tenancy agreement and section 45(2) of the *Act* by ending the tenancy early.

I accept that the rental unit was not re-rented for February because the Landlord has submitted the posting for the unit showing it was still posted February 16, 2022. I accept that the Landlord lost February rent due to the Tenant's breach.

I accept that the Landlord mitigated their loss by posting the rental unit for rent February 07, 2022, as shown in the posting submitted. I acknowledge that the Landlord posted the unit for rent for \$50.00 more than the rent amount the Tenant was paying which is a failure to mitigate loss. However, I also accept that the Landlord re-rented the unit for \$1,400.00 and therefore that the Landlord was not firm on the rent amount.

Given the above, I award the Landlord \$1,300.00 for loss of rent for February of 2022. I acknowledge rent was \$1,400.00; however, I reduce the amount awarded to \$1,300.00 because the Landlord posted the rental unit for \$50.00 more in rent than they should have.

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

As stated, the Tenant agreed to pay the Landlord \$38.00 for outstanding utilities.

In total, the Landlord is entitled to \$1,438.00 for loss of rent, utilities and the filing fee. The Landlord can keep the \$700.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a monetary order for the remaining \$738.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$1,438.00. The Landlord can keep the \$700.00 security deposit. The Landlord is issued a monetary order for the remaining \$738.00. 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: September 27, 2022

Residential Tenancy Branch