



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PCPM LTD AS AGENT FOR COUNTESS GARDENS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Landlord July 06, 2022 (the "Application"). The Landlord applied:

- For compensation for monetary loss or other money owed
- To keep the security and pet damage deposits

The Agents for the Landlord appeared at the hearing. The 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 provided evidence for the hearing. I confirmed 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 compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security and pet damage deposits?

Background and Evidence

The Landlord seeks \$1,350.00 for loss of rent for June 2022, because the Tenant did not move into the rental unit as planned.

The Landlord provided a written tenancy agreement. The tenancy start date was June 01, 2022. The tenancy was for a fixed term ending May 31, 2023. Rent was \$1,350.00 per month due on the first day of each month. The security deposit was \$675.00 and the pet damage deposit was \$675.00. The agreement was signed for the Landlord and by the Tenant.

The Tenant testified as follows. At the time the tenancy agreement was signed, they were asked to sign several documents. The Tenant did not get a chance to look at the tenancy agreement. The Tenant was told the tenancy agreement was "semi-legal". The Tenant did not get a copy of the tenancy agreement after they signed it.

In reply, S.P. for the Landlord said they do not agree with the Tenant's testimony, they handed the tenancy agreement to the Tenant and explained it to the Tenant. S.P. said the Tenant was given a chance to read the tenancy agreement.

The parties agreed the Tenant never moved into the rental unit. The Tenant said they told the Landlord June 10, 2022, they were cancelling the tenancy agreement.

The Agents for the Landlord said the parties did a move-in inspection. The Tenant said no move-in inspection was done.

The parties agreed no move-out inspection was done and the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection.

The parties agreed the Tenant did not give the Landlord a forwarding address in writing. However, from the Landlord's documentary evidence, it looks like the Tenant provided a forwarding address in writing by email June 27, 2022.

The Agents for the Landlord said the Tenant ended the tenancy early. The Agents said they were told June 10, 2022, that the Tenant was not moving into the rental unit. The Agents said they accepted the verbal notice ending the tenancy. The Agents said the rental unit was posted for rent immediately. The Agents said the rental unit was

re-rented for July 01, 2022, for the same rent amount as the Tenant was supposed to pay.

The Tenant said they ended the tenancy because they had concerns about the Landlord, Landlord's Agents and rental unit. The Tenant said the Landlord and Agents did not follow basic tenancy requirements which caused the Tenant to not be able to move into the rental unit.

I have reviewed the evidence submitted by both parties and will refer to it below as necessary.

Analysis

Security and pet damage deposits

Based on the testimony of the parties, I find the Tenant did not extinguish their rights to the security and pet damage deposits under sections 24 or 36 of the *Act*.

I do not need to decide if the Landlord extinguished their right to claim against the security or pet damage deposits because extinguishment only relates to claims that are for damage to the rental unit, and the Landlord is claiming for loss of rent.

The tenancy ended June 10, 2022, when the Tenant told the Landlord they were not moving into the rental unit and the Landlord accepted this.

The Tenant provided their forwarding address to the Landlord in writing by email June 27, 2022, as shown in the Landlord's documentary evidence.

Under section 38(1) of the *Act*, the Landlord had 15 days from June 27, 2022, to repay the security and pet damage deposits or file a claim against them. The Landlord filed the Application July 06, 2022, within time. However, RTB Policy Guideline 31 relates to pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet.

The Landlord was not allowed to apply to keep the pet damage deposit towards loss of rent. The Landlord was only allowed to claim against the pet damage deposit for

pet-related damage. Given there was no pet-related damage, the Landlord had to return the pet damage deposit within 15 days of June 27, 2022. The Landlord did not do so and did not comply with section 38(1) of the *Act*. Under section 38(6) of the *Act*, the Landlord must pay the Tenant double the pet damage deposit being \$1,350.00. There is also interest owed on the original amount of the pet damage deposit.

Loss of rent

The Tenant signed the written tenancy agreement May 31, 2022, and was bound by it as of that date under section 16 of the *Act*. As stated in section 16 of the *Act*, it does not matter that the Tenant never moved into the rental unit, they were bound by the agreement when they signed it.

I do not accept that the Tenant did not get a chance to look at the tenancy agreement because I find it unlikely the Tenant would sign the agreement without having looked at it. Further, the Tenant initialled the agreement in eight separate places, at least once on each page, which further supports that the Tenant had a chance to look at the agreement and did look at the agreement.

I do not find it relevant that the Tenant did not get a copy of the tenancy agreement after they signed it because the Tenant signed the agreement and was bound by it, whether they received a copy or not. Further, the Tenant must have known they had to pay rent of \$1,350.00 by the first day of each month from reviewing and signing the agreement because these are the main points of the agreement. I do not accept that the Tenant did not know what was required regarding rent because they did not get a copy of the agreement after they signed it.

Under the tenancy agreement, the Tenant had to pay the Landlord \$1,350.00 in rent by June 01, 2022, for June rent.

Under section 45(2) of the *Act*, the Tenant was not allowed to end the tenancy before May 31, 2023, the end of the fixed term.

I accept the Tenant ended the tenancy June 10, 2022, because the parties agreed on this. The Tenant was not allowed to end the tenancy June 10, 2022, prior to the end of the fixed term. The Tenant breach section 45(2) of the *Act* and the tenancy agreement by ending the tenancy early. I note that there is no evidence before me that section 45(3) of the *Act* applied.

I accept that the Landlord lost June rent because the Tenant ended the tenancy in breach of the *Act* and agreement.

I accept that the Landlord mitigated their loss by posting the unit for rent immediately because I did not understand the Tenant to dispute this. Further, I am satisfied the Landlord could not have re-rented the unit for June when they only found out June 10, 2022, that the Tenant was not moving in.

The Landlord is entitled to \$1,350.00, being loss of rent for June 2022, under section 67 of the *Act*.

Summary

The Landlord is considered to hold \$2,029.11 in deposits being the security deposit (\$675.00), pet damage deposit doubled (\$1,350.00) and interest owed on the original amount of the pet damage deposit (\$4.11). The Landlord can keep \$1,350.00 of this under section 72(2) of the *Act*. The Landlord must return \$679.11 to the Tenant. The Tenant is issued a Monetary Order for this amount.

Conclusion

The Tenant is issued a Monetary Order for \$679.11. This Order must be served on the Landlord. If the Landlord 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: April 24, 2023

Residential Tenancy Branch