



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL (Landlord)
 MNSD, FFT (Tenants)

Introduction

This hearing occurred by conference call based on cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their application June 19, 2022 (the “Landlord’s Application”). The Landlord applied:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security deposit
- To recover the filing fee

The Tenants filed their application June 23, 2022 (the “Tenants’ Application”). The Tenants applied:

- For return of double the security deposit
- To recover 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 provided evidence for the hearing. I went over service of hearing packages and evidence.

The Tenant confirmed receipt of the hearing package and evidence for the Landlord's Application.

There was an issue with service of the hearing package for the Tenants' Application; however, the Tenant withdrew the Tenants' Application.

The Landlord confirmed receipt of the Tenants' evidence the Monday before the hearing. The Tenants provided a typed statement, correspondence between the parties, the tenancy agreement and a Monetary Order Worksheet. The evidence was received by the Landlord one day late (see rule 3.15 of the Rules). I admit the Tenants' evidence despite the Landlord receiving it one day late because it is a very small amount of evidence and could easily be reviewed before the hearing.

The parties were given a chance to point to relevant evidence and make relevant submissions. I have considered all evidence provided on the Landlords' Application and all oral testimony of the parties. 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 compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord sought the following compensation:

| Item | Description | Amount |
|------|---|----------|
| 1 | Cleaning | \$70.00 |
| 2 | Hiring property manager to re-rent the unit | \$250.00 |

| | | |
|---|-------------------|-------------------|
| 3 | Half of June rent | \$1,100.00 |
| 4 | Filing fee | \$100.00 |
| | TOTAL | \$1,520.00 |

A written tenancy agreement was provided and the parties agreed it is accurate. The tenancy started February 01, 2022, and was for a fixed term ending January 31, 2023. Rent was \$2,200.00 per month due on the first day of each month. The Tenants paid a \$1,100.00 security deposit.

The Tenant said they moved out of the rental unit May 31, 2022. The Landlord said the Tenants moved out June 01, 2022.

The parties agreed the Tenants provided their forwarding address to the Landlord June 08, 2022.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The parties agreed the Tenants 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 agreed they did move-in and move-out inspections but no Condition Inspection Reports were done.

#1 Cleaning \$70.00

The Landlord sought compensation for having to hire cleaners to clean the rental unit at the end of the tenancy.

The Tenant said they left the rental unit reasonably clean as required.

#2 Hiring property manager to re-rent the unit \$250.00

The Landlord sought compensation for having to hire a property management company to re-rent the unit because the Tenants ended the tenancy early and the Landlord was away at the end of the tenancy. The Landlord said the company handled the move-out process and finding new tenants.

The Tenant said it is not their problem the Landlord was away at the end of the tenancy.

#3 Half of June rent \$1,100.00

The Landlord sought compensation for loss of rent. The Landlord said the Tenants gave written notice May 11, 2022, ending the tenancy. The Landlord said the Tenants told the Landlord verbally April 27, 2022, that they were moving out but did not provide a date at that time. The Landlord said the Tenants did not pay June rent. The Landlord said they hired the property management company to re-rent the unit around May 19, 2022, and it was re-rented for mid June for \$2,400.00.

The Tenant said they told the Landlord April 27, 2022, that they were moving. The Tenant said the Landlord did not ask for written notice ending the tenancy on April 27, 2022. The Tenant agreed they provided written notice May 11, 2022, ending the tenancy. The Tenant indicated that there were a lot of tenants to rent the unit. The Tenant said the rental unit could have been re-rented for June 01, 2022, and that the property management company could have been hired sooner.

Both parties provided documentary evidence which I will refer to below as necessary.

Analysis

Under rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Security deposit

Under sections 24 and 36 of 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*. 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 both parties in relation to having done move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to decide if the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for cleaning, hiring a property manager and loss of rent, none of which are damage.

Based on the testimony of the parties, I accept the tenancy ended May 31, 2022, or June 01, 2022.

Based on the testimony of the parties, I accept the Tenants provided their forwarding address to the Landlord June 08, 2022.

Under section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from June 08, 2022. The Landlord's Application was filed June 19, 2022, within time. The Landlord complied with section 38(1) of the *Act* and was allowed to claim against the security deposit when the Landlord's Application was filed. The Tenants are not entitled to return of double the security deposit under section 38(6) of the *Act*.

Compensation

Section 7 of the *Act* sets out when compensation is awarded.

Policy Guideline 16 deals with compensation and states:

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.

#1 Cleaning \$70.00

Under section 37 of the *Act*, the Tenants had to leave the rental unit reasonably clean. The parties disagreed about whether the rental unit was left reasonably clean. The Landlord did not provide compelling evidence of the condition of the rental unit at the end of the tenancy, such as photos or a Condition Inspection Report. The Landlord has failed to prove the rental unit was not left reasonably clean and failed to prove a breach by the Tenants. This claim is dismissed without leave to re-apply.

#2 Hiring property manager to re-rent the unit \$250.00

The Landlord did not submit documentary evidence such as an invoice or receipt showing they paid \$250.00 to hire a property management company. The Landlord has failed to prove the amount or value of the loss claimed. This claim is dismissed without leave to re-apply.

#3 Half of June rent \$1,100.00

The tenancy agreement was for a fixed term ending January 31, 2023. The Tenants were not allowed to end the tenancy until January 31, 2023, under section 45(2) of the *Act*. The tenancy agreement could not change the *Act*. Regardless of when the Tenants gave notice, they moved out May 31 or June 01, 2022, and ended the tenancy early in breach of section 45(2) of the *Act*.

The Tenants remained responsible for loss of rent up until January 31, 2023, the end of the fixed term tenancy.

However, the Landlord did not lose rent due to the Tenants' breach. Had the Tenants stayed until the end of the fixed term as required, the Landlord would have received the following rent:

| | |
|----------------|------------|
| June 2022 | \$2,200.00 |
| July 2022 | \$2,200.00 |
| August 2022 | \$2,200.00 |
| September 2022 | \$2,200.00 |

| | |
|----------------|--------------------|
| October 2022 | \$2,200.00 |
| November 2022 | \$2,200.00 |
| December 2022 | \$2,200.00 |
| January 2023 | \$2,200.00 |
| Total = | \$17,600.00 |

Due to the Tenants' breach, the Landlord received the following:

| | |
|----------------|--------------------|
| June 2022 | \$1,200.00 |
| July 2022 | \$2,400.00 |
| August 2022 | \$2,400.00 |
| September 2022 | \$2,400.00 |
| October 2022 | \$2,400.00 |
| November 2022 | \$2,400.00 |
| December 2022 | \$2,400.00 |
| January 2023 | \$2,400.00 |
| Total = | \$18,000.00 |

The Landlord received more rent due to the Tenants' breach and therefore is not entitled to compensation. This is set out in RTB Policy Guideline 3 at page 2:

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. The tenant is not entitled to recover any remainder.

This claim is dismissed without leave to re-apply.

#4 Filing fee \$100.00

The Landlord is not entitled to recover the filing fee because they have not been successful on their application.

Summary

The Landlord has failed to prove they are entitled to compensation. The Landlord must return the security deposit to the Tenants and the Tenants are issued a Monetary Order for \$1,106.00, which includes interest owed on the security deposit.

Conclusion

The Tenants are issued a Monetary Order for \$1,106.00. 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 12, 2023

Residential Tenancy Branch