



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2021, but the landlord does not know when the tenant moved out. The tenant gave notice to end the tenancy on September 6, 2022.

Rent in the amount of \$1,300.00 was payable on the 1st day of each month, and the landlord seeks a monetary order of rental arrears of \$1,300.00 for October, 2022. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The landlord has also provided a copy of the tenancy agreement for this hearing. The rental unit is a carriage suite above a workshop.

The landlord further testified that a move-in condition inspection report was completed by the parties, and a copy has been provided for this hearing. The tenant refused to participate in a move-out condition inspection and report; the landlord gave a final opportunity to schedule it by Facebook Messenger and by email. Correspondence provided for this hearing show that the tenant refused and advised the landlord to keep the security deposit.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,769.60:

- \$350.00 for furniture;
- \$369.60 for cleaning;
- \$650.00 for the security deposit;
- \$1,300.00 for the last month's rent; and
- \$100.00 for the filing fee.

The claim for furniture is a pro-rated amount for a new mattress. The mattress provided for the tenant was left with cat urine on it by the tenant's cat. A photograph of a department store price tag has been provided for this hearing. The landlord estimates \$2,000.00 to replace, and thought the amount of \$350.00 would be fair. No receipt has been provided; the landlord purchased it after the application was submitted.

The landlord has also provided a quote for cleaning in the amount of \$369.60 but hired the cleaner and the cost was actually more. There are notations about cleanliness on the move-in condition inspection report, however the tenant soiled it significantly more. The landlord did not complete a move-out condition inspection report, however numerous photographs have been provided for this hearing.

The tenant testified that he moved out as a direct result of the landlord's treatment. The tenant was able to secure a place on the 6th of September, 2022 and is willing to allow the landlord to keep the security deposit.

It was the landlord who decided that he no longer wanted the tenant on the property, escalated the situation making the tenant feel unsafe and unwanted. The tenant's lawyer advised that given the situation, the tenant is not required to give a full months notice due to safety. The landlord spoke to the tenant very aggressively, and the tenant felt he could no longer go outside. Letters of support from other acquaintances have been provided for this hearing.

There was no damage to the mattress; the tenant had a mattress protector on it the whole time.

The tenant also disputes cleaning, and testified that he cleaned the rental unit at move-out. Numerous photographs have been provided by the tenant for this hearing, which the tenant testified were taken on September 30, 2022.

The tenant left under unfortunate circumstances, and had given the landlord an opportunity to end things amicably, and offered to sign a Mutual Agreement to End Tenancy, but the landlord declined. The tenant also gave the landlord an opportunity to do the move-out inspection without the tenant; the landlord would not commit to being respectful so the tenant declined to participate. The landlord is verbally abusive.

The landlord did not attempt to re-rent until October 20, 2022; and a copy of a Facebook advertisement has been provided by the tenant for this hearing.

SUBMISSIONS OF THE LANDLORD:

The tenant is not truthful. The landlord follows the rules of a landlord with great respect and does not feel that the tenant gave the same respect toward the landlord.

SUBMISSIONS OF THE TENANT:

The evidence that the landlord has submitted is deliberately misleading. The landlord did not purchase a mattress, and the tenant has seen a Facebook post of the landlord looking for a new mattress. Motivations of the landlord having the tenant leave was all to do with money.

Analysis

Firstly, a tenant must give notice to end a month-to-month tenancy before the date rent is payable under the tenancy agreement, and is effective at the end of the following month. In order to be successful in a claim for unpaid rent for the month following, the landlord must prove that the landlord did what was reasonable to re-rent. In this case, the only evidence I have of that is a Facebook advertisement. It is not dated, however

the tenant testified that it was posted on October 20, 2022, and the landlord did not dispute that. The landlord knew by September 6, 2022 that the tenant would be vacating at the end of September. Therefore, I am not satisfied that the landlord mitigated any loss of rental revenue for October.

However, the tenant has agreed that the landlord may keep the security deposit, and therefore I so order.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord has provided numerous photographs, but none of a mattress stained with cat urine. The only evidence of a cost, if such damage exists, is a price tag in a department store. I am not satisfied that the landlord has established any of the elements in the test for damages.

With respect to cleaning, the *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the tenancy at move-in and move-out. There is no question that the tenant refused to participate. The landlord has provided a quote for cleaning, and testified that he actually paid more. However, the move-in condition inspection report shows that the rental unit was not entirely cleaned at the beginning of the tenancy, and there is no move-out condition inspection report. Any compensation for damage or loss is meant to put the claiming party in the same situation as if no damage had occurred. I have reviewed all of the evidence, and I am not satisfied that the rental unit wasn't already in need of cleaning at the beginning of the tenancy.

Therefore, I dismiss the landlord's application for damages.

The tenant made the offer for the landlord to keep the security deposit prior to the date the landlord filed the application. Since the landlord's applications for compensation for unpaid rent and damages is dismissed, the landlord is not entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$650.00 security deposit in full satisfaction of any and all claims between the parties with respect to this tenancy.

This order is final and binding and may be enforced.

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: July 16, 2023

Residential Tenancy Branch