



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDCL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities and a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

The landlord was represented at the hearing by an agent who gave affirmed testimony. The tenant attended the hearing with another person acting as the tenant's agent and interpreter for the tenant. The tenant's agent also gave affirmed testimony, and was also affirmed to well and truly interpret the hearing from the English language to the tenant's Native language and from the tenant's Native language to the English language to the best of his skill and ability.

The landlord's agent submitted that all evidence, with the exception of a condition inspection report, was provided to the tenant by registered mail on February 14, 2023, which was returned to the landlord unclaimed.

The tenant has not provided any evidentiary material to the landlord.

Any evidence that a party wishes to rely on must be provided to the other party as well, even if they already have a copy, because it is important for all parties to know what is before me. Since the tenant has not provided any evidence to the landlord, I decline to consider it. Similarly, since the landlord has not provided a copy of the condition inspection report to the tenant, I decline to consider it.

With respect to the balance of the landlord's evidence, the tenant submitted that the tenant was out of Canada from the beginning of February and returned about a month ago. The landlord submitted that the evidence was sent to the tenant by registered mail

on February 14, 2023 to the forwarding address of the tenant as indicated in the condition inspection report. I accept that, and I find that the balance of the landlord's evidence has been provided to the tenant in accordance with the law. All evidence of the landlord, with the exception of the condition inspection report has been reviewed, and the evidence I find relevant to the application 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for suite cleaning and recovery of a bonus?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2022 and was to revert to a month-to-month tenancy after February 28, 2023, however the tenant left abruptly on January 4, 2023. Rent in the amount of \$2,595.00 was payable on the 1st day of each month, with a signing bonus of \$125.00 credited monthly, bringing the rent to \$2,378.75 per month. On February 23, 2022 the landlord collected a security deposit from the tenant in the amount of \$1,297.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

The tenant did not give notice to end the tenancy, but arrived at the landlord's office a few days prior to vacating and said they were leaving, and another agent of the landlord completed the move-out condition inspection report.

The landlord's agent further testified that 2 months rent was lost, for the months of January and February, 2023. No rent was received for those 2 months. A tenant ledger, a copy of which has been provided for this hearing is updated every month. At the time of move-out the ledger had not been updated, but is now, and a copy has been provided for this hearing.

\$403.75 is outstanding from November, 2022 rent, and because the tenant did not remain in the rental unit for the fixed term, the \$125.00 bonus was removed. The tenant owes \$2,997.50 for February, 2023 rent.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$5,718.75:

- \$403.75 for partial rent for November, 2022;
- \$2,595.00 for January, 2023 rent;
- \$2,595.00 for February, 2023 rent; and
- \$125.00 for a signing bonus.

The tenant testified that he paid \$379.00 on November 17, which was agreed by the landlord's agent during a settlement discussion. That was paid by a debit card. The tenant also paid \$1,000.00 on November 14 and another \$1,000.00 on November 16, 2022.

The tenant also testified that notice to vacate was given to the landlord at the beginning of December, 2022, effective on January 1, 2023 in person and by email, due to many mice in the house which came to the point where the tenant could no longer live there. The tenant wanted an upper level unit, but the landlord wanted more money for rent. The landlord was told about the mouse problem in person and through numerous emails and text messages, which started in the summer and continued. The landlord did nothing.

Analysis

Firstly, the *Residential Tenancy Act* specifies that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. The *Act* also states that neither a landlord nor a tenant may end a tenancy prior to the end of a fixed term unless the parties mutually agree in writing, or if the landlord has cause to evict, or the tenant fails to pay rent.

I have reviewed the tenant ledger provided by the landlord which runs from February 24, 2022 to January 11, 2023. It shows that rent was paid on October 1, 2022 in the amount of \$2,378.75. It also shows that the rent for November, 2022 was paid on November 1, 2022, which was returned for insufficient funds, for which the landlord charged a \$25.00 fee, and the arrears are \$2,403.75. The ledger shows 2 cheques received by the landlord for \$1,000.00 each on November 14 and 16, 2022, leaving a balance owing of \$403.75. Rent for December was paid in the amount of \$2,378.75 on December 1, 2022, as well as on January 1, 2023, leaving the balance due of \$403.75. The final entry in the ledger shows that no rent was received for January, 2023, and the balance outstanding at that time was \$2,782.50.

I have also reviewed the tenancy agreement which states, "One month free incentive (\$2,595) plus signing bonus \$125. 1 month free will be credited over 12 months for \$216.25 monthly – rent \$2,378.75, the \$125 of first month." No where in the tenancy agreement does it indicate that the signing bonus only applies if the tenant remains in the rental unit until the end of the fixed term.

The landlord seeks recovery of the incentives, which should be returned in the amount of \$2,595.00 and arrears of \$403.75 should be awarded to the landlord, in addition to the unpaid rent for January, 2023, and recovery of the \$125.00 signing bonus.

Since the tenancy agreement does not specify that the incentives or bonus will be removed if the tenant fails to remain in the rental unit to the expiration of the fixed term, I find that the tenant owes \$2,378.75 for each month. The tenancy agreement provides for a late rent penalty of \$25.00, and I accept that the rent payment for November, 2022 and the late rent fee amount to **\$2,403.75**, which the landlord is entitled to collect from the tenant.

I also accept the undisputed testimony of the landlord's agent that the tenant vacated the rental unit on January 4, 2023 and the landlord's tenant ledger shows that the tenant paid the rent on January 1, 2023. The tenancy agreement specifies a fixed term until February 28, 2023. Since the tenant moved out prior to the end of the fixed term, I find that the tenant owes the landlord rent for February, 2023 in the amount of **\$2,595.00**, with no discounted amount because the tenant didn't pay the rent or remain in the rental unit for that month.

Since the landlord has not provided a copy of the move-out condition inspection report to the tenant, and I decline to consider it for that reason, I am not satisfied that the landlord has established a claim for suite cleaning.

Since the landlord has been partially successful with the application, the landlord is also entitled to recover the **\$100.00** filing fee from the tenant.

A landlord must return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must apply to keep the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant. In this case, I find that the tenancy ended on January 4, 2023 when the tenant vacated the rental unit, and the landlord's agent testified that the tenant's forwarding address was received in writing on January 4, 2023. The landlord made the application on February 3, 2023, which is beyond the 15 days, and the landlord has not applied to

keep the security deposit. Therefore, I find that the landlord must repay double the amount of the \$1,297.50 security deposit, or \$2,595.00.

The Act permits me to set-off amounts that I find are owed by and to parties. Having found that the landlord has established a claim of \$5,098.75, I set that amount off from the security deposit as doubled of \$2,595.00, and I grant a monetary order in favour of the landlord for the difference of **\$2,503.75**. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,503.75.

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: November 08, 2023

Residential Tenancy Branch