



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, LRSD, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order as against the tenant for unpaid rent or utilities, 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 the tenant was assisted by an Interpreter who was 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 the Interpreter's skill and ability. The parties each gave affirmed testimony and were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed, and the evidence and testimony 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Should the landlord recover the filing fee from the tenant?

Background and Evidence

The landlord testified that this fixed-term tenancy began on June 17, 2024 and was to revert to a month-to-month tenancy after June 30, 2025, however the tenant moved out on July 3, 2024. Rent in the amount of \$2,095.00 was payable on the 1st day of each month, and the tenant paid a pro-rated amount of \$977.67 for the first partial month of the tenancy, as well as a pro-rated amount of \$35.00 for parking. On June 18, 2024 the landlord collected a security deposit from the tenant in the amount of \$1,047.50 as well as a pet damage deposit in the amount of \$1,047.50. The pet damage deposit has been returned to the tenant. The rental unit is an apartment suite, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that right after moving in, on June 29 or 30, the tenant said that the tenant needed to be in a senior facility. A move-out condition inspection report was completed on July 11, 2024 and the rental unit was advertised that day, however no copies of advertisements have been provided for this hearing. The landlord testified that the landlord had 8 empty 1-bedroom units at the time, and showed the tenant's rental unit.

The rental unit was re-rented for September 5, 2024.

The landlord claims \$2,095.00 for rent for the month of August, 2024, and to keep the security deposit in partial satisfaction. The tenant has not served the landlord with an application claiming the security deposit.

The tenant testified that it's the landlord's responsibility to re-rent the rental unit, and there is no evidence of showings or advertisements showing that the rental unit was available for August 1, 2024.

The landlord provided the tenant with an email dated July 30, 2024, a copy of which has been provided for this hearing which informs the tenant that the rental unit has been re-rented effective August 13, 2024 and the landlord will require \$878.54 to cover the 13 days in August. The tenant testified that before the tenant replied, the tenant was told that the potential tenant had changed her mind. The landlord is playing games; postponed the availability, which was acknowledged by the landlord in the email. The tenant asked why, and the landlord didn't deny it.

Other email messages have also been provided for this hearing, wherein the landlord notifies the tenant that the rental unit is being shown every day, and because rent for

July was paid the suite will be available August 1st, and if rented earlier, the landlord would refund the rent, less the \$400.00 in liquidated damages.

SUBMISSIONS OF THE LANDLORD:

The tenant paid rent for July, 2024 so the system shows an availability of August 1, 2024, but the advertisement was for August 1, 2024. The landlord still holds a \$50.00 credit on the tenant's ledger from the parking credit.

SUBMISSIONS OF THE TENANT:

None

Analysis

Firstly, a tenant may not enter into a fixed term tenancy and move out prior to the end date of the fixed term without justification. If the tenant does so, the landlord may claim the rent to the end date of the fixed term, or to the date the rental unit is re-rented, whichever occurs first. However, the onus is on the landlord to mitigate any loss of rental revenue suffered by advertising the rental unit as soon as reasonable, for an availability that is reasonable, and for a monthly amount that is no more than what the tenant was paying.

In this case, the landlord testified that the move-out condition inspection report was completed on July 11, 2024 and the rental unit was advertised that day, available August 1, 2024, but the landlord has not provided any evidence to support that testimony. I accept the undisputed testimony of the landlord that there were 8 empty 1-bedroom suites at the time, however that does not constitute mitigation. Therefore, I dismiss the landlord's application for unpaid rent.

The record shows that the landlord has applied for a monetary order for unpaid rent in the amount of \$2,095.00, recovery of the \$100.00 filing fee and an order permitting the landlord to keep the security deposit of \$647.50. I accept that might be an error, but the landlord has not applied for any other relief.

The law requires a landlord to return a security deposit or pet damage deposit 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 make an application claiming against the security deposit within that 15 day period. In this case, no one has provided any evidence of when the tenant's forwarding address was received by the

landlord, in writing. I accept the undisputed testimony of the landlord that the pet damage deposit has been returned to the tenant.

Since the landlord has not been successful with the application, the landlord is not entitled to recover the filing fee from the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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: September 18, 2024

Residential Tenancy Branch