



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for unpaid rent, lost rent revenue, cleaning, and other losses, as well as an order to retain the security deposit. The Landlord also requests an order for payment of the filing fee.

The Landlord and Tenant appeared for the scheduled hearing. The Tenant argued that she had not personally received the Notice of Hearing and Landlord's evidence package, however, I accept the Landlord's evidence that it was served by registered mail on December 19, 2017 to the forwarding address provided in writing by the Tenant at the end of the tenancy, and the Canada Post tracking number confirms it was picked up on December 21, 2017. The forwarding address notice from the Tenant is dated December 13, 2017 and states that correspondence can be sent to the address provided. I find that the Notice of Hearing was properly served and that evidence was submitted by all parties.

The Tenant states that she learned of the hearing when she was sent a reminder to submit her evidence, which she provided to this office, however, she did not serve the Landlord with her evidence package; accordingly, she was required to provide direct testimony of that evidence so as to provide the Landlord with full opportunity to respond during the hearing. I did not consider any documentary evidence submitted by the Tenant which was not described in her testimony, as the Landlord did not have opportunity to provide an informed response.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Is the Landlord entitled to a monetary order for rent arrears and lost rent revenue, pursuant to section 67 of the *Residential Tenancy Act* ("Act")?

Is the Landlord entitled to a monetary order for cleaning and other damages, pursuant to section 67 of the Act?

Is the Landlord entitled to retain the security deposit in partial satisfaction of the monetary award, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

The tenancy started August 1, 2013 and ended December 13, 2017. Rent was \$900/month and a security deposit of \$450.00 was paid. The initial term was for two years, which reverted to a month-to-month tenancy thereafter. The Tenant had fallen behind in her rent and the parties agreed to payment schedules over time. The Tenant states that the last agreement was to provide her December rent on December 15, 2017 which would catch her up; an email dated November 3rd references this understanding. On December 1, 2017, she paid the full \$900.00 for the November rent as promised and received a receipt which was submitted into evidence. Around noon of that same day, the Tenant received a job offer that required her to relocate; she immediately gave written notice of her intention to end the tenancy December 31, 2017. She stated that she was not aware that she had to provide notice which would take effect the last day of the following month.

The Landlord, concerned that the rent arrears would not be caught up due to the Tenant moving, approached the Tenant on December 3, 2017 with an ultimatum, the terms of which are in dispute. The parties were unable to come to an understanding and the Landlord served the Tenant with a 10-Day Notice to End Tenancy for Unpaid Rent, effective December 13, 2017. The Tenant states she was unaware that she had the option of disputing the Notice, although she argues that rent was considered due December 15th as per their past agreement, and that she wasn't in arrears.

In the end, the Tenant accepted the Notice to End Tenancy and began making arrangements to move out. With the shorter notice of only ten days, she says she had to ask for one additional day and recruit the help of friends to assist her in moving out her final belongings which included some kitchen items, her toiletries and photographs,

among other things. She also needed additional time to do the cleaning so that a move-out inspection could be completed. The Landlord agreed to this additional day on December 12, 2017, but the Tenant states that she received a call a few minutes later stating that there would be no additional time and she was required to vacate right away. The Tenant moved out December 13, 2017 and provided a written forwarding address. She left the key and remote at a nearby store as instructed by the Landlord.

The Landlord states that the Tenant was consistently late with rent payments and that there were many attempts between the parties to catch up on rent arrears. She argues that this was causing considerable stress for her. When the Landlord received the December 1st notice that the Tenant was vacating December 31st, she knew she was entitled to proper notice effective the end of January, and she approached the Tenant to ask for rent for December and January. When the Tenant refused, a 10-Day Notice to End Tenancy was served. The Landlord began advertising for a new renter on December 8, 2017 and incurred \$54.00 in costs for the advertising, stating that the apartment was available December 15th. She claims that the market rent in the area justified a rent increase from \$900.00 per month to \$1,150.00 per month, and provided samples of ads for similar apartments in the area. She states that it eventually rented for \$1,150.00 per month under an 18-month fixed term tenancy commencing February 1, 2018, and provided a receipt showing a security deposit payment. The Tenant suggested it was rented in January but offered no evidence of this. The Landlord claims \$900.00 for December arrears and for January lost rent revenue as a result of the late notice to end the tenancy from the Tenant.

The Landlord admits that the Tenant asked for an additional day to move out. The Landlord states that she was frustrated with tenants who ask for additional time to move out and that there was no possible way the Tenant would have been able to clear out the rest of her things in 24 hours. The Landlord admits that she denied the Tenant the opportunity to stay another day to finish moving out and that she made two attempts to arrange a move-out inspection in writing. The email communications are conflicting as the initial December 12th email states that the Tenant is not available as she is working and therefore she will not be at the apartment the next day at 1 pm; shortly thereafter a second email from the Tenant states that she is not available for inspection *in the morning* and that the Landlord may enter the apartment at 1 pm. At 5:30 am the following day, the Tenant sends another email stating that she is out at 1 pm and that the Landlord "*can do the inspection anytime you want after that. I will not be available.*" The Landlord arrived shortly after 1 pm and the Tenant did not appear for any inspection.

The Tenant states that she contacted the Landlord December 14th to retrieve her remaining belongings but that the Landlord only gave her two options: the Landlord would remove the items to storage at the Tenant's expense or she would dispose of the items at the Tenant's expense; the Tenant states she tried again on December 21st to ask for permission to pick up her personal things, but the Landlord did not respond to the email. The Landlord claims that the Tenant instructed her to dispose of the rest of her things.

The Landlord claims that the apartment was left dirty and full of belongings. Several photographs were submitted into evidence to show the condition that the apartment was left in. She obtained a quote from Molly Maid to clean the apartment for \$172.50, but decided to do the cleaning herself; she testified that she spent 4 or 5 hours doing the cleaning. The Landlord obtained several quotes to dispose of garbage and items left behind; she testified that she accepted the lowest quote of \$220.00 to remove things left behind.

The Landlord is also claiming NSF cheque bank fees of \$7.00 each for four months in 2016 and 2017; this claim was for \$28.00 in total, and was not disputed by the Tenant.

The Landlord asked for \$180.00 for locksmith charges as she decided to re-key the exterior doors of the apartment building and provide new keys to the residents at the end of the tenancy; this was withdrawn as the Landlord had no evidence to suggest that the Tenant was obligated to pay a charge to re-key the apartment building exterior doors.

The Landlord is claiming a total calculated as follows:

December rent arrears	\$900.00
January lost rent revenue	\$900.00
Cleaning	\$172.50
Trash removal	\$220.00
Bank NSF fees	<u>\$ 28.00</u>
TOTAL	\$2,220.50

In addition, the Landlord is requesting payment of the filing fee of \$100.00. The Landlord is asking to reduce this monetary award by the amount of the security deposit of \$450.00 which she has retained, in partial satisfaction of the amount requested.

Analysis

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss.

Cleaning:

Under section 37(2) of the Act, a tenant is required to leave the rental unit “*reasonably clean, and undamaged except for reasonable wear and tear*”. The burden of proof is on the Landlord to prove that the cleanliness fails to meet this standard and that further cleaning is required. The photographs and evidence of both parties confirms that the apartment was not left in a state of cleanliness at the end of the tenancy. However, I find that the Landlord had a duty to mitigate her losses and could have done so by following through with her initial agreement to allow the Tenant the additional day to complete the move-out. I am satisfied that the parties initially agreed to this, in order to save everyone time and money; the Landlord opted out of the agreement after reconsidering it. As a result, the Landlord was left with an apartment that was not in a state of cleanliness and required cleaning.

While the Tenant is responsible for cleaning the apartment, I am only prepared to award the Landlord the nominal amount of **\$90.00** for cleaning, to take into account the fact that she failed to mitigate her losses by changing her mind and refusing the Tenant's request to stay another 24 hours to complete her move-out, which occurred with very little notice. The apartment was not re-rented until February 1st, and the Landlord admitted that it is very difficult to show and rent a place at Christmas time, and therefore I find that it would have been reasonable to allow a delay of one day to avoid the complications and costs which resulted.

As for the garbage removal, I find that the Tenant made reasonable efforts to retrieve her belongings and that the Landlord deliberately refused her requests. The Landlord provided her ultimatum in an email dated December 14th, but it did not include any option for the Tenant to retrieve her things as she had requested. The Tenant expressed her frustration in an email reply, stating in part: “*you may dispose of everything.*” That resulted in additional costs of \$220.00, not to mention the Tenant losing her belongings and items of sentimental value. Although I find that it was not reasonable for the Landlord to hire someone to discard the Tenant's belongings when

she was asked several times for the opportunity to retrieve her things, the Tenant appears to have agreed to accept that outcome. The Landlord is awarded **\$220.00** for garbage removal.

Lost Rent Revenue:

The duty to mitigate also arises in the claim for lost rent revenue. I find that the Landlord is entitled to the December rent of **\$900.00** as rent arrears, as it was due on December 1 and the Tenant admits it has not been paid. Proper notice from the Tenant would have entitled the Landlord to another \$900.00 in rent for January. However, the Landlord has failed to satisfy me that she has suffered an actual financial loss as a result of the tenancy ending without proper notice. She testified that the new renters had moved in February 1st under an 18 month lease, for \$250.00 more per month than she would have received had this tenancy continued. If the new tenancy carries out to the full term, this results in additional rent revenue of \$4,500.00, which far surpasses the rent loss of \$900.00 due to the Tenant's late notice. Furthermore, had the Landlord advertised her apartment for only \$900.00 a month, it would have been reasonable to expect a renter would have taken advantage of that rate by renting it immediately in mid-December. Although she failed to mitigate her losses in December and January by advertising at a much higher rate, she in fact had a net rent revenue gain in the long run. Accordingly, I find that there is no rent revenue loss as the Landlord has not proven that she is short any rent revenue given the new lease agreement. I am not prepared to allow the cost of advertising for the rental unit as that is an expected cost of doing business when any tenancy ends, and is not the responsibility of the Tenant.

Security Deposit:

The Landlord did apply to retain the security deposit within the 15-day deadline under section 38, as she filed on December 13, 2017, which is the same day the tenancy ended and she received the forwarding address. Under section 35 of the Act, the landlord and tenant must do an inspection and complete a condition inspection report at the end of the tenancy. Failure to comply with this section results in the landlord or tenant's right to claim a security deposit being extinguished (section 36(2)). The parties submitted emails showing attempts to arrange a move-out inspection and after the first attempt to schedule a viewing time, it appears that the Tenant was not prepared to meet in the morning on December 13th; the Tenant later indicates that the move-out inspection can go ahead in her absence. The Landlord attended at the apartment shortly after 1 pm to find the door unlocked and the keys and remote left at a store below as per their agreement.

I find that the Tenant failed to participate in a move-out inspection and that she has extinguished her right to receive the security deposit pursuant to section 36. Accordingly, I am allowing the Landlord to retain the security deposit of \$450.00 in partial satisfaction of the monetary award. As the Landlord was successful with most of her Application, I am allowing the filing fee of \$100.00. The final monetary award is calculated as follows:

Cleaning	\$90.00
Garbage removal	\$220.00
Rent Arrears	\$900.00
Bank NSF	\$28.00
Filing Fee	<u>\$100.00</u>
TOTAL	\$1,338.00

LESS:

Security deposit	<u>(450.00)</u>
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BALANCE OWED: \$888.00

This Order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord shall retain the security deposit of \$450.00. The Tenant is ordered to pay the sum of \$888.00 forthwith to the Landlord.

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: June 20, 2018

Residential Tenancy Branch