



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDL-S, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38.

The "first hearing" on May 3, 2018 lasted approximately 57 minutes and the "second hearing" on November 2, 2018 lasted approximately 66 minutes.

The landlord, the tenant and the tenant's agent attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At both hearings, the tenant confirmed that her agent had permission to speak on her behalf.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on May 3, 2018 was adjourned after the parties engaged in settlement discussions for 57 minutes. By way of my interim decision, dated May 4, 2018, I adjourned the tenant's application to the second hearing date of October 29, 2018. At the first hearing, I notified both parties that they were not permitted to serve any further evidence after the first hearing and before the second hearing.

I was unable to attend the second hearing on October 29, 2018 so the matter was rescheduled to November 2, 2018. Both parties confirmed receipt of the notices of

rescheduled hearing to the November 2, 2018 date and the second hearing occurred on this date.

At both hearings, the tenant's agent confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security and pet damage deposits?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at the second hearing, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2016 and was for a fixed term ending on May 31, 2018. A security deposit of \$750.00 and a pet damage deposit of \$1,000.00 were paid by the tenant. No move-in or move-out condition inspection reports were completed for this tenancy. A forwarding address was provided by the tenants to the landlord by way of email on September 16, 2017. The landlord did not have any written permission to keep any part of the tenant's security or pet damage deposits. The landlord filed his application to keep both deposits on September 29, 2017. A written tenancy agreement was signed by the tenant's ex-husband and the landlord but no new tenancy agreement was signed by the tenant when her ex-husband moved out. The tenant continued the tenancy and an email was sent by the tenant's ex-husband to the landlord confirming this.

The landlord stated that the tenant vacated the rental unit on September 9, 2017, while the tenant said that it was August 31, 2017. The landlord claimed that rent of \$2,100.00 was due on the 5th day of each month for most of the tenancy. The tenant claimed that rent was \$2,050.00 due on the 7th day of each month and the landlord agreed but only

from June 1, 2017 forward. The landlord said that he returned the security deposit of \$750.00 to the tenant's ex-husband but retained the \$1,000.00 pet damage deposit. The tenant denied that the security deposit was returned to her ex-husband.

The landlord seeks a monetary order of \$3,376.05 plus the \$100.00 application filing fee. The tenant disputed all of the landlord's claims except for the stool for \$120.00 and the \$50.00 late rent fee for December 2016.

Analysis

I find that both parties were bound by the tenant's ex-husband's written tenancy agreement and addendum because the tenant continued to stay in the rental unit after her ex-husband left. Although she asked the landlord to sign a new written tenancy agreement, none was ever signed, yet she continued to live there and pay the rent. Schedule A signed by the landlord on June 1, 2016, the date the tenancy started, lists the tenant as a "tenant" living upstairs in the rental unit, together with her ex-husband. The email, dated August 25, 2016, from the tenant's ex-husband to the landlord, indicates that the tenant will continue to reside in the rental unit and continue his lease.

I award the landlord \$120.00 for the stool and \$50.00 for the December 2016 late rent fee because these amounts were both agreed to by the tenant during the hearing.

I award the landlord the remaining \$350.00 in late rent fees for October and November 2016 and January to May 2017. I find that full rent was due by the first day of each month but the addendum to the written tenancy agreement states that rent received after the 5th day of the month is subject to a late fee. I find that the tenant paid rent past the 5th day of each month during the above listed months. I find that the landlord only agreed to rent being paid on the 7th day of each month as of June 1, 2017 forward, as per the parties' text messages on May 31, 2017. The landlord provided for this \$50.00 late fee in clause 3.0(c) of the written tenancy agreement addendum, as required by sections 7(1)(d) and (2) of the *Regulation*.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application without leave to reapply.

I dismiss the landlord's claim for \$200.00 to replace the carpet transition due to alleged pet damage. The landlord provided an invoice stating it was paid in full and a photograph of the damage. The tenant disputed the landlord's claim, stating that the carpet was like that when she moved in. I find that the landlord failed to provide move-in and move-out condition inspection reports to show the condition of the unit before

and after the tenant moved in to determine whether she caused the damage. The landlord also failed to provide a photograph of the carpet condition before the tenant moved in.

I dismiss the landlord's claim for \$14.60 in landfill fees to dispose of the items from the unit at the end of the tenancy. The tenant said that the items in the landlord's photograph were not hers. The landlord provided receipts totalling \$17.60, which is a different amount. One of the receipts is dated for August 29, 2017, before both parties said that the tenant moved out, and the other is from September 23, 2017, weeks after both parties said that the tenant moved out. This questions when and how the items were left and if they were from the tenant.

I dismiss the landlord's claim for \$296.10 and \$233.54 for the carpets and \$61.81 for the ceiling. The landlord claimed this was a result of water damage because the tenant left the washer hose disconnected from the drain pipe, which damaged the carpet and the ceiling in the unit below the tenant's. The tenant denied causing this damage saying she used the washer normally. The landlord provided an invoice from September 25, 2017, weeks after the tenant moved out and said that he told the inspector, in preparation for listing the house for sale, that the tenant left the washer hose disconnected, assuming it was her since no one else lived there. The landlord did not know when the hose was disconnected and was unable to prove it was the tenant that caused it, rather than a malfunction.

I dismiss the landlord's claim for a loss of rent of \$2,050.00 for September 2017. The landlord did not attempt to re-rent the property after the tenant vacated so he did not suffer a rent loss. He sold the property and said the new tenants moved in on October 1, 2017. He did not show that the tenant forced him to sell the property, as claimed by him because the tenant broke the fixed term lease. He did not show how the sale price was affected by this alleged one month loss in income. The landlord agreed that the tenant provided one month's written notice by email on July 31, 2017, to move out.

I find that the landlord continues to hold the tenant's security and pet damage deposits totalling \$1,750.00. I find that the landlord failed to provide documentary proof that he returned the security deposit of \$750.00 to the tenant's ex-husband. I find that the tenant is not entitled to double the value of the deposits because she did not provide her forwarding address in accordance with section 88 of the *Act* since email is not permitted, and therefore, the doubling provisions have not been triggered.

Over the period of this tenancy, no interest is payable on both deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$520.00 from both deposits and return the remainder totalling \$1,230.00 to the tenant within 15 days of receipt of this decision. The tenant is provided with a monetary order in the amount of \$1,230.00.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,230.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: November 08, 2018

Residential Tenancy Branch