



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL MNSD MNDCT FFT

Introduction

This hearing dealt with applications by both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- a Monetary Order for unpaid rent, damages and loss pursuant to section 67;
- authorization to retain the security deposit and pet damage deposit pursuant to section 38; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant applied for:

- a Monetary Order for damage and loss pursuant to section 67;
- recovery of all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, present sworn testimony and make submissions. The landlord was represented by their agent HR (the “landlord”).

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the other’s application package. Based on the undisputed testimonies I find that the parties were each served with the respective application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a Monetary Award as claimed?

Is either party entitled to the security deposit and pet damage deposit?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in January, 2018 and was scheduled to end in January, 2019. The monthly rent was \$2,300.00 payable on the fifteenth day of each month. A security deposit of \$1,150.00 and pet damage deposit of \$1,150.00 were paid at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant paid the full amount of rent on May 15, 2018. The tenant testified that they gave notice to the landlord by text message correspondence about that time informing them of their intention to end the tenancy. The tenant vacated the rental unit on May 25, 2018 and provided a forwarding address to the landlord on that date. The tenant testified that they did not provide authorization that the landlord may retain any portion of the deposits for this tenancy.

The tenant seeks a monetary award of \$3,346.25 comprised of the return of the deposits for this tenancy in the amount of \$2,300.00 and the costs they incurred for moving in the amount of \$1,046.25. The tenant submitted a receipt from a moving company as evidence of the cost of moving. The tenant testified that it was necessary for this tenancy to end as there was mold in the rental suite and repairs required intrusion into the rental suite.

The landlord submits that the mold was not caused or contributed to by the landlord. The landlord testified that they took reasonable steps to repair the issue in a prompt and timely manner.

The landlord seeks a monetary award of \$3,450.00. The landlord did not dispute the evidence that the tenant paid the full amount of rent on May 15, 2018. The landlord testified that the rental unit was vacant after the tenant left until it was occupied by the

landlord themselves in August, 2018. The landlord seeks a monetary award on the basis of lost rental income for the equivalent of six weeks.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 45 (2) of the *Act* provides that:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is no earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the *Act* explains, “If a tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

In this case, the parties gave evidence that the tenant provided notice to the landlord in early May, 2018. The tenant subsequently paid the rent in full for that month on May

15, 2018 in accordance with the tenancy agreement. The tenant vacated the rental unit on May 25, 2018 but rent was paid up to June 15, 2018. The landlord moved into the rental unit in August, 2018. The landlord provided little information as to why they did not occupy the rental unit earlier, saying that they needed the time to give notice and arrange to move.

I find that there is insufficient evidence that the landlord took reasonable measures to mitigate their losses. The landlord did not dispute that the tenant gave notice to end the tenancy in early May. I find that the landlord had over a month during which they could have taken some steps to move into the rental unit. The landlord did not submit evidence to show why they were unable to do so until August, 2018. While the tenant ended the fixed term tenancy prior to the date specified in the tenancy agreement, I find that the tenant provided over one month's notice and the landlord failed to take any reasonable steps to mitigate their losses. I find that any loss of rental income incurred by the landlord is a result of the landlord's own failure to take reasonable steps, or any steps to minimize their losses. Consequently, I find that the landlord is not entitled to a monetary award as any losses are a result of the landlord's own failure to act reasonably. The landlord's application is dismissed.

I find that there is no evidentiary basis for the tenant's claim for the cost of moving. The parties gave some evidence that the rental unit had some water ingress and accompanying mold. I find that this is insufficient to find that the rental unit was in such a state that the tenant needed to move. I find that there is insufficient evidence to show on a balance of probabilities that the tenant's decision to move was a result of a breach on the part of the landlord. Consequently, I find that the tenant is not entitled to a monetary award for losses. I dismiss this portion of the tenant's application.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the deposits as per section 38(4)(a).

I accept the tenant's evidence that they did not give written authorization that the landlord may deduct any amount from the security or pet damage deposit for this

tenancy. I find that there is insufficient evidence in support of the landlord's submission that the tenant authorized a deduction from the deposits.

The parties testified that the tenant paid the full amount of rent on May 15, 2018 and vacated the suite on May 25, 2018. The tenant provided a forwarding address on that same date. The landlord filed their application for dispute resolution on June 4, 2018, within the 15 day timeframe provided by the *Act*.

I find that the tenant is entitled to a \$2,300.00 monetary award the amount of the security deposit and pet damage deposit for this tenancy. No interest is payable for this period.

As neither party was wholly successful in their claim I decline to issue an order for recovery of filing fees for either party.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$2,300.00.

The tenant is provided with a Monetary Order in the above terms and 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 13, 2018

Residential Tenancy Branch