



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on October 1, 2018 for a fixed term to end October 1, 2019. Rent of \$2,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit. No move-in or move-out inspection was conducted.

The Landlord states that the Tenant’s forwarding address was provided in a letter dated April 17, 2019 and received by the Landlord on May 9, 2019.

The Landlord states that the Tenant never gave any notice to end the tenancy and that the Tenant cancelled the rent cheque for March 2019. The Landlord provides a copy of a bank notice dated March 5, 2019 informing the Landlord of the stop payment. The Landlord states that the Tenant was served with a 10-day notice to end tenancy for unpaid March 2019 rent (the "Notice") by posting the Notice on the door of the unit on March 18, 2019. The Landlord states that by the end of March 2019 the Landlord began to suspect that the Tenant was not in the unit. The Landlord states that the Notice was found still on the door of the unit in the first part of April 2019 and that the unit was vacant except for some furniture. The Landlord states that the Tenant never informed the Landlord of having moved out of the unit. The Landlord claims \$2,500.00 for unpaid March 2019 rent. The Landlord states that the unit was advertised online for the same amount of rent on April 1, 2019 and that a new tenant was obtained for May 1, 2019 at the same rental rate. The Landlord claims lost rental income of \$2,500.00 for April 2019.

The Tenant states that it moved out of the unit on February 28, 2019 and that the Landlord was aware as the Parties had arranged for a move-out inspection between 7:00 and 8:00 p.m. on that date. The Tenant states that this was arranged through text communication in the middle of February 2019. The Tenant states that the Landlord was informed in either late December 2018 or January 2019 that the Tenant would move out of the unit at the end of February 2019. The Tenant confirms that no written notice to end tenancy was given to the Landlord. The Tenant states that at this time the Landlord agreed to this as long as the Tenant assisted the Landlord with finding a new tenant and setting up showings. The Tenant also states that the Landlord refused the Tenant the opportunity to sublet the unit. The Tenant argues that this is contrary to the Act. The Tenant states that the Landlord requested two showings during February 2019 and believes that the Landlord advertised the unit prior to April 1, 2019. The Tenant states that it could not provide any text evidence of communications between the Parties as the Tenant's cell phone was damaged and still is not operating with the text

data inaccessible. The Tenant states that it thinks the Landlord replied to texts during the tenancy.

The Tenant states that the Landlord did not appear for the agreed move-out inspection, so the Tenant was unable to return the keys and fob. The Tenant states that despite several calls and texts to the Landlord there was no response about meeting to return the keys and to conduct the inspection. The Tenant states that it was provided three different phone numbers to contact the Landlord and that no responses came from any of the numbers. The Tenant confirms that no rent was paid for March 2019.

The Landlord agrees that there was contact with the Tenant during the tenancy but that the Landlord never received any texts or calls about ending the tenancy.

The Tenant states that the Landlord had changed the locks and fobs by March 7, 2019 when the Tenant returned to the unit to remove the furniture as neither the Tenant's keys or fobs worked. The Tenant states that it had left the furniture behind as it was waiting for the move-out inspection to finish the removal. The Landlord states that the locks were not changed until the last week in April 2019 and that the Tenant's fobs were not deactivated until April 30, 2019.

The Tenant states that the Landlord has not provided evidence to support when the fobs were deactivated. The Tenant also argues that since the Landlord served the Tenant with the Notice that the Landlord ended the tenancy for the effective date of the Notice, March 29, 2019 and that the Tenant did not end the fixed term.

The Tenant does not dispute the Landlord's claim of \$340.00 for hydro costs.

The Landlord states that the Tenant left furniture behind and in its application claims an estimated \$250.00 for the strata move-out fee and an estimated \$100.00 for the costs of its disposal. The Landlord states that he lost the receipt for the move-out fee that was

paid. The Landlord provides a copy of a strata form setting out \$250.00 as the cost for the move-in. It is noted that no fee is noted for a move-out. The Tenant repeats that it could not remove the furniture as the Landlord changed the locks.

The Landlord states that the addendum to the tenancy agreement requires the Tenant to pay a minimum \$200.00 cleaning fee for professional cleaning costs if the Tenant leaves the unit unclean. The Landlord states that the Tenant left the unit unclean and that it took the Landlord 5 hours to clean the unit. The Landlord provides 4 photos of the unit as supporting evidence of the state of the unit. The Landlord did not complete a move-out inspection report for evidence of the state of the unit at move-out. The Landlord claims \$200.00. The Tenant states that, with the exception of having left a few items of furniture, it left the entire unit clean.

The Landlord states that the Tenant failed to return the keys and fobs to the unit. The Landlord states that the Strata charged \$320.00 to replace the keys and fobs and the Landlord claims this amount. The Landlord provides a copy of an application for fob and key replacement.

The Landlord states that the Tenant's breach of the fixed term caused the Landlord time and effort to find a new tenant and claims \$150.00.

Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is payable until a tenancy is ended. Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. It is undisputed that the Tenant left belongings in the unit into March 2019. For this reason, I consider that the Tenant had not vacated the unit as of March 1, 2019. I consider Tenant's evidence that the locks were changed when they returned on March 7, 2019 to remove the furniture to hold a ring of truth. The Landlord's evidence of a lock

change at the end of April 2019 does not ring true given the Landlord's evidence of finding the unit empty except for the furniture in early April 2019. The Landlord's evidence of advertising the unit on April 1, 2019 is inconsistent with finding the unit empty on a later date. Although the Landlord provides a copy of an application for lock and fob change dated April 30, 2019 there is no evidence that the Strata received this application or that the Landlord paid this amount on or after this date. For these reasons I prefer the Tenant's evidence and find on a balance of probabilities that the Landlord changed the locks and that the tenancy ended due to the Landlord's actions by March 7, 2019 when the Tenant no longer had access to the unit. For these reasons and based on the undisputed evidence that no rent was paid for March 2019, I find on a balance of probabilities that the Landlord has substantiated unpaid rent for the period March 1 to 6, 2019 inclusive in the amount of **\$564.48**. This amount is based on a per diem rate of \$80.65 x 6 days.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 7 of the Act also provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The Tenant has provided no evidence of a written agreement by the Landlord to accept the early end of the fixed term tenancy. Based on the Tenant's evidence that the Tenant moved out before the end of the fixed term I find that the Landlord has substantiated that the Tenant breached the fixed term tenancy. As it has been found that the Landlord changed the locks on some date to and including March 7, 2017, I consider that the Landlord was aware that the unit was vacated in March 2017. Given this awareness I consider that the Landlord should have reasonably taken steps in early March 2017 to mitigate its rental losses. The Landlord's evidence of advertising the unit on April 1, 2017 in the circumstances is not evidence of taking reasonable steps to mitigate rental losses for either March or April 2017. Further the Landlord's supporting evidence of advertising the unit is limited

to a document in a language other than English and I cannot determine that this is evidence of an advertisement or the date of when the unit was advertised. The only other advertising document does not include a date for when the unit was advertised. For these reasons I find on a balance of probabilities that the Landlord did not provide sufficient evidence of reasonable attempts to mitigate the lost rental income claimed for March or April 2019 and I dismiss the claim for lost rental income after the Landlord ended the tenancy on March 7, 2019.

It is undisputed that the lock and fob was not returned to the Landlord. However, as the tenancy agreement does not provide an address for the Landlord and only sets out the dispute address as the Landlord's address I find that the Tenant could only have left the key and fob at the unit. Considering the Tenant's credible evidence that the locks to the unit were changed in March 2019, I find on a balance of probabilities that the Landlord acted to stop the return of the keys to the unit and did not provide the Tenant with any other sufficient method for returning the keys. As a result, I find on a balance of probabilities that it the Landlord has not substantiated that the Tenant caused the Landlord's loss in relation to the return of the key and fob. I therefore dismiss the claim for its replacement cost.

As the Tenant has not disputed the Landlord's claim for unpaid utilities of **\$340.00** I find that the Landlord has substantiated an entitlement to this amount.

As there is nothing in the Act or the tenancy agreement that requires the Tenant to pay for the Landlord's duties in re-renting the unit, I find that the Landlord has not substantiated that the Tenant breached the tenancy agreement or Act and I dismiss the claim for the Landlord's time to find a new tenant.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. As there is no supporting evidence that the

Landlord was charged or paid a move-out fee and considering that there is no invoice for the costs of the disposal of the items left behind I find that the Landlord has not substantiated that the costs being claimed were incurred. I therefore dismiss this claim.

Section 37(2)(a) of the Act provides that When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 6(3)(a) of the Act provides that A term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Although the tenancy agreement sets out a minimum charge for cleaning costs, the pre-determination of these costs is contrary to the Tenant's obligation to only leave the unit reasonably clean. The minimum cleaning charge is therefore not enforceable. Further the Landlord is only entitled only to losses or costs that are caused by the Tenant failing to leave the unit reasonably clean. As there is no move-out condition report setting out the state of the unit at move-out, as the photos from the Landlord only show the items left behind and persons in the process of cleaning a kitchen that does not appear dirty, and considering the Tenant's evidence of having left the unit otherwise clean, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left the unit, beyond the presence of the furniture, unclean. For these reasons I dismiss the Landlord's claim for cleaning costs.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,004.48**. Setting the security deposit plus zero interest of **\$1,250.00** off the Landlord's entitlement leaves **\$245.52** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain \$1,004.48 from the security deposit plus interest of \$1,250.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$245.52**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 27, 2019

Residential Tenancy Branch