



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S, MNDCL-S, FFL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant MB (the "tenant") primarily spoke on behalf of all named respondents.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials and I therefore find they were duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This fixed-term tenancy began October 1, 2019 and ended in March 2020. The monthly rent was \$1,700.00 payable on the first of each month. A deposit of \$2,050.00 was collected at the start of the tenancy. The landlord submits that the deposit consists of a security deposit of \$850.00, pet damage deposit of \$850.00 and additional overpayment

of \$350.00. The tenant submits that \$2,050.00 is comprised of a \$850.00 security deposit, \$400.00 pet damage deposit and additional \$400.00 security deposit collected from each of the other named respondents. The parties submitted receipts signed by the landlord which reflects the tenant's version of payments.

The parties agree that the tenants failed to pay monthly rent for March 2020 and there was an arrear of \$1,700.00. The landlord further submits that they were unable to find a new occupant for the rental unit as the tenants did not provide proper notice and they incurred rental income loss of \$850.00 for April 2020. The landlord also submits that they were unable to find a new occupant at the equivalent amount of rent and could only find a new occupant at monthly rent of \$1,500.00. The landlord submit that they therefore suffered rental income losses on an ongoing basis of \$200.00 monthly for a total amount of \$1,000.00 for the balance of the fixed term tenancy period.

The parties agree that there was a move-out inspection report prepared together dated March 17, 2020. A copy of the condition inspection report was submitted into evidence. The landlord submits that the rental unit required some cleaning and work for which they deducted the amount of \$150.00. The landlord submits that the total amount of deductions agreed upon by the parties, including the rental arrear and rental income losses is \$2,700.00. The calculations provided on the report provides that after the deposits are applied the tenants owe the landlord an additional \$650.00 payment. The landlord testified that the deduction was agreed to by the parties and signed by the tenant.

The tenant submits that the amount of the deduction was added after they had signed the report and they were unaware of the amount the landlord intended to deduct at the time of signing.

The parties agree that subsequently the tenants provided a forwarding address to the landlord by a letter dated March 19, 2020. In the letter the tenants request the return of the deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case the parties provide that a forwarding address was provided to the landlord by the tenants in a letter dated March 19, 2020 and the landlord filed their application for authorization to retain the deposits on March 26, 2020. Accordingly, I find that the landlord was within the timeline provided under the *Act* to file their application.

While the landlord has submitted a condition inspection report which is signed by the parties and provides that a deduction of \$2,700.00 is applicable, the tenants dispute that they agreed to such a deduction. The tenants submit that the amount of a deduction was added after the document was signed.

As the parties provide conflicting testimonies, I must first make a determination of credibility. Based on the totality of the evidence including the parties' testimonies and whether it is consistent with the other evidence and circumstances of this tenancy I find that I prefer the tenant's submissions over that of the landlord. The landlord's testimony was often in contradiction of their own documentary materials. While the landlord provided a written witness statement of an individual who was in attendance at the move-out, they were not called as a witness nor did the landlord provide cogent explanation of who the witness was or why they were in attendance. If the tenants had agreed to the deduction of \$2,700.00 it is unreasonable that they would subsequently request a return of the deposit in their letter of March 19, 2020. Additionally, the landlord's characterization of the amount of the deposits collected is contradicted by their own documentary evidence of receipts.

Taken in its entirety I find that the tenants submission that the amount of deduction was added after the document was signed is more credible than the landlord's position that the deduction was authorized by the tenants. Therefore, I find that the landlord has not obtained the tenant's written authorization that any portion of the security deposit may be deducted.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

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 the present case the parties agree that the tenants ended the fixed-term tenancy in March 2020, six months earlier than the end of tenancy date provided in the agreement of September 30, 2020. The landlord submits that they took efforts to attempt to re-rent the unit but were unable to find a new occupant until mid-April and then at a reduced monthly rent amount. I find little evidence in support of the landlord's submissions. There are no advertisement postings or correspondence with prospective tenants. I find the landlord's testimony with no documentary evidence to be insufficient to demonstrate that any reasonable steps were taken in an attempt to mitigate their losses.

Based on the evidence, while I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated that any losses incurred are due to the tenants rather than the landlord's failure to take steps to mitigate their losses. I do not find it reasonable that the landlord was not able to find a new occupant when the tenants vacated in mid-March 2020 and the landlord testified that the rental suite did not require major cleaning or renovation work.

I find that any rental income losses incurred by the landlord is attributable, not to the tenants, but the landlords' failure to take reasonable steps to find a new occupant or negotiate the full amount of the rent. I therefore dismiss the portion of the landlord's application seeking a monetary award for loss of rental income.

I accept the evidence of the parties that the tenants failed to pay monthly rent in the amount of \$1,700.00 for March 2020 as required under the tenancy agreement and therefore issue a monetary award in that amount to the landlord.

I accept that the landlord incurred some costs for cleaning and maintenance of the rental unit above and beyond what would be expected for regular wear and tear. While the landlord did not provide invoices or receipts to substantiate the amount claimed, in their written submissions the tenants acknowledge the \$150.00 amount as a reasonable deduction. Therefore, I issue a monetary award in that amount to the landlord.

As the landlord was not wholly successful in their application I decline to order recovery of the filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$1,850.00 of the tenant's deposit of \$2,050.00 in full satisfaction of the monetary award issued in the landlord's favour.

The landlord is ordered to return the balance of the deposit of \$200.00 to the tenants.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$200.00. 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: July 31, 2020

Residential Tenancy Branch