Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

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 or utilities - Section 67;
2. A Monetary Order for damage to the unit - 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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. No issues were raised in relation to the exchange of the Parties evidence.

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 March 1, 2021 to end May 31, 2021. No move-in inspection was offered by the Landlord. At the outset of the tenancy the Landlord collected $600.00 as a security deposit. The Parties mutually agreed to end the tenancy for May 15, 2021 and the tenancy ended on that date. The Tenant sent their forwarding address to the Landlord by mail and email on May 18, 2021. The Landlord received the forwarding address. The Landlord did not

return the security deposit. The tenancy agreement provides for the inclusion of hydro with the rent and adds as additional information that “Hydro bill will be assessed for any extreme usage beyond the same year prior.”

The Landlord states that after giving the Tenant two offers to conduct a move-out inspection the Tenant attended the inspection. No report was completed with the Tenant however the Tenant agreed to the condition of the unit.

The Tenant states that no offers were made for a move-out inspection, that no report was provided or completed by the Landlord on May 15, 2021 and that the Landlord later sent the Tenant a completed inspection report. The Tenant disagreed with the report.

The Landlord states that the Tenant consumed extra hydro than was consumed the year prior and claims $369.77 as the increased costs. The Landlord determines the extra hydro usage based on the prior year’s consumption. The Landlord resides in the upper part of the house containing the rental unit and the Landlord pays the hydro costs for both. The Landlord states that the Landlords did not increase their own usage and used wood for heat. The Landlord included an examination of weather patterns in making the determinations of the increased costs. The Landlord provides a spreadsheet showing the calculations made to support their claim for $369.77. The Landlord does not provide any copies of the hydro bills.

The Tenant states that the tenancy agreement provides that the rent includes hydro, that the extra term for overages is not clear, that the Tenant did not understand the provision, and that the Tenant does not know what extreme usage means.

The Landlord states that the Tenant did not clean any part of the unit and claims $283.50 for cleaning costs at a rate of $50.00 per hour. The Landlord provides an invoice. The Tenant states that the unit was cleaned by the Tenant. The Tenant states that the Landlord initially informed the Tenant that cleaning costs would be $80.00 and

that the Tenant did agree to this cost to be deducted from the security deposit. The Tenant provides a letter dated May 18, 2021 agreeing to $80.00 being deducted from the security deposit. The Tenant states that they are still agreeable to this cost for cleaning.

Analysis

Section 24(2)(a) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant at least 2 opportunities, as prescribed, for the move-in inspection. Based on the undisputed evidence that no offers were made for a move-in inspection I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although it was indicated during the hearing that as the Landlord's right to retain the security deposit was extinguished the Landlord would have to pay the Tenant double the security deposit, upon further consideration of the Landlord's claims beyond the claim for damage to the unit I find that the Landlord was entitled to retain the security deposit to make its application. As a result, and as the Landlord made their application within 15 days of receipt of the Tenant's forwarding address, I find the Landlord is not required to pay the Tenant double the security deposit.

Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Given that the tenancy agreement provision for extra hydro costs does not provide any basis for determining the Tenant's extra consumption

separate from the Landlord's consumption, that the provision does not provide any formula or definition for "extreme usage" and considering the Tenant's evidence that this provision for "extreme usage" is unclear and not understood, I find on a balance of probabilities that the extra hydro provision is not clear and is therefore unenforceable. Even if the provision were clear, the Landlord provided no hydro bills to support any basis for their calculations. I dismiss the claim for $369.77.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Given that the Landlord's photos and considering the Tenant's evidence of having done cleaning to the unit I find on a balance of probabilities that the Tenant left the unit with some cleaning misses. However, the Landlord's evidence of cleaning misses does not support the amount being claimed as the costs for that cleaning. As the Tenant has agreed to cleaning costs of **$80.00,** I find that the Landlord is only entitled to this amount and I dismiss the Landlord's claims for costs above $80.00.

The Landlord's claim for hydro has not met with any merit. Further it is undisputed that the Landlord originally sought $80.00 as the cleaning costs and that the Tenant agreed in writing to this deduction prior to the Landlord making its application. For these reasons, I decline to award recovery of the filing fee.

Deducting the Landlord's entitlement of **$80.00** from the security deposit plus zero interest of **$600.00** leaves **$520.00** to be returned the Tenant forthwith.

Conclusion

I Order the Landlord to retain $80.00 from the security deposit plus interest of $600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **$520.00**. 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 the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 1, 2021

Residential Tenancy Branch