



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, DC, FF, SS; MNSD, FF

Introduction

This hearing dealt with the landlord's application, filed 14 October 2014, pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order to be allowed to serve documents or evidence in a different way than required by the Act pursuant to section 71; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant LT appeared (the tenant). The landlord appeared. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he had authority to act on behalf of the tenant RD, who is his mother.

The tenant testified that he served the landlord with the dispute resolution package by registered mail. The tenant provided me with a Canada Post tracking number that showed the same. The landlord confirmed receipt. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she served the tenants with the dispute resolution package by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. The tenant confirmed receipt. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

As there were no issues with service, I need not consider the landlord's application to serve documents in a different way as the issue is moot.

The tenants' security deposit was \$875.00. The tenants seek twice that amount. The tenants' application indicates that the tenants seek \$1,700.00. The tenant asked to amend the tenants' application to correct the math error. I allowed the tenants' request as there is no undue prejudice to the landlord in correcting this math error.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary award for the return their security deposits? Are the tenants entitled to a monetary award equivalent to the amount of their security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

The parties entered into a tenancy agreement on 13 April 2014. The tenancy agreement is signed by all three parties. The tenants began occupying the rental unit on 15 May 2014. The tenancy ended 17 July 2014. Monthly rent of \$1,750.00 was payable on the fifteenth. On 13 April 2014, the landlord collected a security deposit in the amount of \$875.00.

Both parties agree that the tenants provided their forwarding address to the landlord on 17 July 2014.

The landlord testified that the tenant did not pay rent that was due 15 June 2014. The tenant testified that he did pay rent due 15 June 2014 in cash, but that the landlord did not issue a receipt to the tenant.

On 11 June 2014 the landlord wrote to the tenants:

You are hereby notified that you need to vacate the premises at [address] on July 31, 2014. The property has been sold.

The tenant inquired whether this notice entitled him to receive a month of compensation from the landlord.

On 24 July 2014 the landlord wrote to the tenants advising them that they owed the landlord \$500.00 and half a month's rent. The landlord notes:

Also – tenant did not give notice to move rent owing \$850.00

The landlord and tenant entered into a separate agreement for services. There is dispute between the parties as to the content of the agreement, the completion of the agreement, and there whereabouts of supplies purchased for the completion of this agreement. The landlord claims for compensation from the tenant for his failure to complete the work under this agreement and the resulting deduction from the sale price of the rental unit.

Analysis

Subsection 2(1) of the Act sets out that:

2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

"Tenancy agreement" is defined in section 1 of the Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Residential Tenancy Policy Guideline, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

I find that the agreement for services is not part of the tenancy agreement and thus I do not have any authority to order compensation under that agreement. The landlord's application for compensation in relation to the provision of the services is dismissed.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants' rent in the amount of \$1,750.00 was due monthly on the fifteenth of the month. The tenant states that he paid rent that was due 15 June 2015 in cash and that the landlord did not issue a receipt. The landlord says that she did not provide this rent. In this case, the landlord has the burden of proving that she is entitled to receive rent; the tenants have the burden of providing a defence. A defence to this claim is that rent was paid, in full. The onus is properly on the tenant to prove that the tenants paid their rent as it is nearly impossible to prove a negative. The tenant has not provided me with any documentary evidence that he paid his rent; such evidence could have included a bank statement showing withdrawals of an amount sufficient enough to cover that month's rent. I find, on a balance of probabilities, that the landlord has proven her entitlement to rent under the tenancy agreement and that the tenants have failed to show that they provided their rent in full to the landlord.

I must now determine whether or not the tenants had a right to deduct all or a portion of the rent.

Section 49 of the Act deals with ending a tenancy where a property has been sold:

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit...

I find that the notice the landlord gave on 11 June 2014 was notice pursuant to section 49 of the Act. I make this finding on the basis of the landlord's written note that, "The property has been sold."

Pursuant to section 50, where a landlord gives notice pursuant to section 49 of the Act, a tenant may end the tenancy early with 10 days' written notice. The tenants did not provide written notice to the landlord. Thus the tenants were not entitled to end the tenancy any earlier than the 31 July 2014 date set by the landlord.

Section 51 of the Act deals with tenant's compensation for a section 49 notice:

- (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord...

Pursuant to section 51 of the Act, the tenant was entitled to one month rent as compensation for the landlord's notice under section 49. The landlord's letter of 24 July 2014 does not state that rent was owed for one and one half months, but only one half month's rent. I find that the letter of 24 July 2014 is contemporaneous documentation of a claim for only one half month's rent as the landlord was providing the tenants with their section 51 compensation. I find that the landlord has proven her entitlement to one half month's rent from the tenants.

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 subsection 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.

The parties agree that the tenants provided their forwarding address to the landlord on 17 July 2014. The landlord did not file her claim until 14 October 2014. The tenants did not sign any written authorization to retain the security deposit. As such, the tenants have proven their entitlement to compensation pursuant to subsection 38(6) of the Act. In addition, the tenants have proven their entitlement to return of their original security deposit.

As the parties have both been successful in their applications, I order that each party will bear the cost of their own filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$875.00 under the following terms:

Item	Amount
Unpaid June 15 Rent	-\$1,750.00
Unpaid rent from July 15 to July 31	-875.00
Section 51 Compensation	1,750.00
Subsection 38(6) Compensation	875.00
Return of Security Deposit	875.00
Total Monetary Order	\$875.00

The tenants are 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 these orders, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 25, 2015

Residential Tenancy Branch