



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN TEAM REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT
 MNDCT-S, FFL

Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on June 22, 2018. The Tenants applied for a monetary order for damages or compensation under the *Act*, the return of their security deposit, and the return of their filing fee. The Landlord’s Application for Dispute Resolution was made on July 5, 2018. The Landlord applied a monetary order for damages or compensation under the *Act*, permission to retain the security deposit and to recover the filing fee

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenants and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all the evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for damages or compensation under the *Act*?

- Are the Tenants entitled to a monetary order to recover their security and pet damage deposits?
- Are the Tenants entitled to recover the filing fee for their application?
- Is the Landlord entitled to a monetary order for damages or compensation under the Act?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the filing fee for their application?

Background and Evidence

Both parties testified that the tenancy began on June 19, 2018, and that no formal tenancy agreement had been signed. Rent was in the amount of \$3,200.00 and was to be paid by the first day of each month. The Parties also agreed that at the outset of the tenancy, the Tenants paid a \$1,600.00 security deposit and a \$1,600.00 pet damage deposit, as well as a prorated rent for 13 days for June 2018, in the amount of \$1,267.00. The parties agreed that there was no official move-in inspection completed for this tenancy.

Both parties also testified that the Tenants issued a verbal notice to end their tenancy on June 20, 2018, with an immediate effective date. Both parties agreed that the Tenants moved out of the rental unit on June 20, 2018, the same day of their notice.

The Tenant testified that they had decided to move out right away as the Landlord had not completed several of the repairs to the property that they had requested when they conducted the initial viewing. The Tenants testified that the Landlord had assured them when they picked up the key to the property on June 18, 2018, that their requested repairs had been completed, however, when they arrived on the property the next day they discovered that a black mould issue had not been properly dealt with.

The Tenants testified that the black mould had been discovered on the property during their initial viewing of the rental property and that the Landlord had assured them that it would be treated properly. However, on the day they moved in, they discovered that the black mould had just been covered with baseboard and painted over. The Tenants submitted six pictures taken on the evening of June 19, 2018, of the black mould in the bathroom of the rental property, into documentary evidence.

The Tenants testified that they contact the Landlord regarding the mould and a security light that was not working. The Tenant testified that they Landlord told them that it was “their problem now” as they had taken possession of the property and that they had been left with the impression that the Landlord would not be taking care of the property during their tenancy or addressing their current concerns. The Tenants testified that for their family’s health and safety they decided to leave the property immediately.

The Tenants testified that the Landlord had provided them with an uninhabitable rental unit due to the black mould. The Tenants are requesting a monetary order for the recovery of their rent for June 2018 and the return of both their security and pet damage deposits.

The Landlord testified that she had completed all the repairs that the tenants had requested, including treating the black mould in the bathroom, changing the locks, conducting a gas inspection and upgrading the electrical system on the property. The Landlord testified that she had spent a lot of money to repair the rental property for the Tenants tenancy, as she had thought that they would be there for several years. The Landlord also testified that she had not told the Tenants that their concerns about the property they had reported to her on the evening of June 19, 2018, were “their problem now.” The Landlord testified that the Tenant never gave her a chance to address or repair any additional issues that they had with the rental property before they walked out on the tenancy.

The Landlord testified that she was unable to re-rent the rental unit, for July 2018 due to the Tenants short notice. The Landlord is requesting a monetary order for the loss of rental income for July 2018 and the recovery of her costs for a re-keying the property, a gas inspection, and electrical upgrades that she had completed at the request of the Tenants. The Landlord submitted three invoices into documentary evidence for the repair work she had completed before the Tenants took possession of the rental property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that a formal tenancy agreement was not signed between these parties for this tenancy. Section 13 of the *Act* states the following:

Requirements for tenancy agreements

13(1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

I find that the Landlord was in breach of section 13(1) of the *Act* when she did not ensure that the parties to this tenancy signed a written tenancy agreement. However, I find that the parties did enter into a verbal month to month term tenancy, that beginning on June 19, 2018, the date when the Tenants paid rent and took possession of the rental unit.

I also accept the testimony of both parties that the move-in inspection had not been completed for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that the Landlord was in breach of section 23 of the *Act* when she did not ensure that the move-in inspection was completed in accordance with the *Act*.

I accept the agreed upon testimony of both parties that there was black mould present in the bathroom of the rental property at the time of the initial viewing, and that the parties had agreed that the Landlord would treat the black mould and repair the bathroom before the Tenants took possession. I have reviewed the photographic evidence provided by the Tenants, and I find that the photographs show the condition of the property on the day that they took possession. I also find that the Tenant had provided sufficient evidence to prove to me that there continued to be the presence of black mould in the bathroom of the rental property when they took possession and that the presence of black mould in a home is a health and safety risk to a tenant.

Section 32 of the *Act* places the responsibility on the Landlord to provide and maintain a rental property that meets health, safety and housing standards.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the Landlord was in breach of section 32 of the *Act* when she rented out a rental property that she knew had black mould without properly.

I accept the testimony of the Tenants that due to this breach of the *Act* by the Landlord they decided to end their tenancy. However, I find that the presence of black mould is not sufficient reason, under the *Act*, to end a tenancy without notice. I find that the Tenants should have given the Landlord the opportunity to conduct repairs to the rental property, and if she refused, then they should have applied for Dispute Resolution with the Residential Tenancy Branch to seek an Order for Repair.

Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) 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

Based on the date that the Tenants gave notice, June 20, 2018, I find that this tenancy could not have ended in accordance with the *Act* until July 31, 2018. Therefore, I find that the Tenants were in breach of section 45 of the *Act* when they failed to issue sufficient notice to end their tenancy. Consequently, I find that the Tenants are not entitled to the prorated return of their rent for June 2018.

As for the Landlord's claim for compensation in the amount of \$3,200.00, for lost rental income due to the Tenants providing short notice to end their tenancy.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the Tenants were in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. I accept the Landlord's testimony that she was unable to re-rent the unit for July 2018 due to the Tenants short notice. I find that the Landlord has provided sufficient evidence to prove that she suffered a loss due to the Tenants breach of the *Act* and the value of that loss. Therefore, I award the Landlord the requested amount of \$3,200.00 in the recovery of her lost rental income for July 2018.

The Landlord has requested the recovery of the costs associated with re-key the rental unit, in the amount of \$305.88, section 25 of the *Act* states the following:

Rekeying locks for new tenants

- 25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).

Pursuant to section 25 of the *Act*, I find that the Tenants were within their rights under the Act to request the that locks to the rental unit be changed at the start of their tenancy. I also find that the Act is clear that the Landlord may not charge that cost back to a tenant. Therefore, I dismiss the Landlord's claim for \$305.88 in costs to change the locks on the rental unit.

The Landlord has also asked to recover her costs for completing a gas inspection on the rental unit, and electrician services and upgrades to the rental unit, that had been completed at the request of the Tenants. I have reviewed the receipts for the work the Landlord is claiming for in her application, and I find that the work completed falls under regular maintenance and is the obligation for the Landlord to provide, pursuant to section 32 of the *Act*. Therefore, I dismiss the Landlord's claim for \$141.75 for a gas inspection, \$300.00 in electrician services and \$327.81 in the purchase of an industry standard outlet and breaker for the rental unit.

In regard to the security deposit and pet damage deposit, that both the Landlord and the Tenants have claimed. Section 38(1) of the *Act* provides the conditions in which a landlord may make a claim to retain the security deposit, or a tenant may make a claim for the return of a deposit, at the end of a tenancy. The *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file

an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, I find that this tenancy ended on June 20, 2018, the dated both parties testified that Tenants advised the Landlord they were ending their tenancy and returned the keys to the rental property to the Landlord. In addition, I accept the testimony of the Landlord that the Tenants provided her with their forwarding address on June 20, 2018. Accordingly, the Landlord had until July 5, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted her Application for Dispute resolution to claim against the deposit on July 5, 2018, within the statutory timeline. However, I also accept the testimony of both parties that the Landlord did not conduct the move-in/move-out inspections for this tenancy as required under the *Act*.

Return of security deposit and pet damage deposit

38 (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

Pursuant to section 38 of the *Act*, the failure of a Landlord to complete the move-in inspection extinguish the Landlord's right to claim against the security deposit or pet damage deposit in relation to damage to the rental unit. My review of the Landlord's application noted that the Landlord's claim includes a request for lost rental income, in the amount of the security and pet

damage deposits. Therefore, I find that the Landlord was within her rights to hold on to the security deposit and pet damage deposit pending the results of her application.

As per my above award to the Landlord, of \$3,200.00 in lost rental income, I grant the Landlord permission to retain the security deposit and pet damage deposit, in full satisfaction of that award.

<u>Landlord's Items</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Rent - July 2018	\$3,200.00	100%	\$3,200.00
Gas Inspection	\$141.75	0%	\$0.00
Re-Keying Locks	\$305.88	0%	\$0.00
Electrician Services	\$300.00	0%	\$0.00
Outlets and Breaker	\$327.81	0%	\$0.00
		0%	\$0.00
			\$3,200.00
Security and Pet Damage Deposit held by the Landlord			-\$3,200.00
		Due	\$0.00

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Due to the number of breaches of the *Act*, committed by both sides of this dispute I decline to award the recovery of the filing fee paid by either party.

Conclusion

I dismiss the Tenants application without leave to reapply.

I grant the Landlord permission to retain the security deposit and pet damage deposit held for this tenancy, in full satisfaction of the award contained in my above decision.

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 8, 2018

Residential Tenancy Branch