



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD
 MNDL, MNRL, FFL

Introduction

This hearing dealt with 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 Tenant’s Application for Dispute Resolution was made on June 26, 2018. The Tenant applied for the return of his security deposit and for a monetary order due to losses under the tenancy agreement. The Landlord’s Application for Dispute Resolution was made on September 9, 2018. The Landlord applied for a monetary order for losses due to the tenancy, a monetary order for unpaid rent, for permission to retain the security deposit and to recover her filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant 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.

I have reviewed all 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

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damages due to the tenancy?
- Is the Landlord entitled to retain the security and pet damage deposits?
- Is the Landlord entitled to recover the filing fee for her application?
- Is the Tenant entitled to a monetary order for losses due to the tenancy?
- Is the Tenant entitled to the return of his security and pet damage deposits?

Background and Evidence

Both parties testified that the tenancy began on October 15, 2012, as a one-year fixed term that rolled into a month to month after the first year. Rent in the amount of \$2,100.00 was to be paid by the fifteenth day of each month and at the outset of the tenancy, the Tenant paid a \$675.00 security deposit and a \$350.00 pet damage deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenant was hospitalized in early May 2018 and the parties were in email and text communication regarding possibly ending the tenancy. Both parties also agreed that no formal written notice was issued by the Tenant to end his tenancy. The Landlord and the Tenant testified that the keys to the rental unit and the Tenant's forward address were provided to the Landlord by the first week of July 2018.

The Landlord testified that she was unable to re-rent the rental unit for July 2018, due to the Tenants short notice. The Landlord agreed that she had been in contact with the Tenant and his family since May 2018, regarding the possible end of the tenancy but that she had been unclear as to what the Tenant wanted until she received the keys in the mail. The Landlord is requesting a monetary order for the loss of rental income from June 15, 2018, to July 15, 2018. The Landlord confirmed that she did find a new renter to take over the rental unit as of August 1, 2018.

The Tenant testified that he had removed all of his possession from the rental unit by June 14, 2018, but that he had held on to the keys to the rental unit as he was still awaiting placement in a care facility. The Tenant testified that his family returned the key to the rental unit to the Landlord once the local health authority approved his placement. The Tenant testified that he feels that he should have to pay the rent from June 15 to July 15, 2018, as he was not living in the rental unit at that time.

The Landlord also testified that the blackout shutters in the bedroom of the rental unit had been damaged during the tenancy and it had cost her \$87.08 to have them repaired. The Tenant agreed during the hearing that the shutters had been damaged and he also agreed to repay the Landlord the \$87.07 that she was requesting to have them repaired.

The Parties also agreed that their tenancy agreement had included cable services that the Landlord had not provided throughout the tenancy, nor had she offered a rent reduction when the service was turned off by the provider. The Landlord agreed that she owes the Tenant \$1,658.80, in the recovery of his out of pocket costs to have his cable set up at his own expense.

Analysis

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

I accept the agreed upon testimony of both parties that the Landlord agreed to pay the Tenant \$1,658.80 in cable bills, as this service had been contracted to in the tenancy agreement but not provided by the Landlord. Therefore, I award the Tenant the agreed amount of \$1,658.80 in the recovery of his out of pocket cable costs for the life of his tenancy.

I also accept the agreed upon testimony of both parties that the Tenant damaged the shutters in the bedroom of the rental unit. During the hearing, both parties agreed that the Tenant would repay the Landlord's cost of \$87.08 for the repair of the shutters. Therefore, I award the Landlord the agreed amount of \$87.08 in the recovery of her costs to repair the shutters in the rental unit.

As for the Landlord's claim for the recovery of her loss of rental income for the rental period of June 15 to July 15, 2018, due to the Tenant's short Notice to end his tenancy. I find that the parties to the tenancy entered into a one-year fixed term tenancy that had rolled into a month to month term tenancy (periodic tenancy) as of October 15, 2013, in accordance with the *Act*.

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

I find that the Tenant verbally advised the Landlord that he may be ending his tenancy on May 10, 2018, due to health issues, but that he never formally issued Notice to the Landlord in writing that he would be ending his tenancy.

I accept the testimony of both parties that the Landlord was in receipt of the keys to the rental unit and the Tenant's forwarding address as of the first week of July 2018. Therefore, I find that the Landlord was in receipt of the Tenant's notice to end his tenancy as of the first week of July 2018 and that this tenancy end as of July 7, 2018. However, I find that this tenancy could not have ended in accordance with the *Act* until August 15, 2018. Therefore, I find that the Tenant was in breach of section 45 when he failed to issue his notice to end his tenancy in accordance with the *Act*.

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 Tenant was in breach of section 45 of the *Act* when he ended his tenancy without giving sufficient notice. I accept the Landlord's testimony that she was unable to re-rent the unit until August 1, 2018, due to the Tenants short notice. I find that the Landlord has suffered a loss of rental income due to the Tenant's breach. Therefore, I

award the Landlord her requested amount of \$2,100.00 in rent for the period of June 15 to July 15, 2018.

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 July 7, 2018, the dated both parties testified that the Landlord was in receipt of the keys to the rental unit and the Tenant's forwarding address. Accordingly, the Landlord had until July 22, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant 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 September 9, 2018. I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that he is entitled to the return of double the security deposit and pet damage deposit. I find for the Tenant, in the amount of \$2,050.0, for the return of double the security deposit.

<u>Tenant's Item</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Shaw	\$1,658.80	100%	\$1,658.80
Return of double the Security and Pet Damage Deposit			\$2,050.00
			<u>\$3,708.80</u>
<u>Landlord's Item's</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Rent - July 2018	\$2,100.00	100%	\$2,100.00
Damage to shutters	\$87.08	100%	\$87.08
			<u>\$2,187.08</u>
	Awarded to Tenant		\$3,708.80
	Awarded to Landlord		<u>\$2,187.08</u>
	Due to Tenant		\$1,521.72

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord had been only partially successful in her application, I decline to award the recovery of the Landlord's filing fee paid for her application.

Conclusion

I find for the Tenant under sections 38, 67 and 72 of the Act. I grant the Tenant a **Monetary Order** in the amount of **\$1,521.72**. The Tenant is provided with this 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 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: November 8, 2018

Residential Tenancy Branch