



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on September 4, 2019 and amended on October 31, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant was represented at the hearing by L.C., his mother and agent. The Landlords attended the hearing on their own behalves. L.C. and the Landlords provided affirmed testimony.

On behalf of the Tenant, L.C. testified the Notice of Dispute Resolution Hearing package and the amendment were served on the Landlords by registered mail on September 13 and October 31, 2019, respectively. The Landlords acknowledged receipt of both packages. In addition, the Landlords testified that the documentary evidence upon which they intended to rely was served on the Tenant by registered mail on or about September 15, 2019. L.C. acknowledged receipt on behalf of the Tenant. No issues were raised during the hearing with respect to service or receipt of these documents. The parties were represented or were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

All in attendance were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the security deposit and/or pet damage deposit?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the Tenant rented the property with 4 other tenants: K.H., B.M., C.P., and C.B. The tenancy agreement confirms the fixed-term tenancy began on September 1, 2018 and was expected to continue to August 31, 2019. During the tenancy, rent in the amount of \$2,950.00 per month was due on the first day of each month. The Tenant and his roommates paid a security deposit of \$1,475.00.

During the hearing, the parties agreed the Tenant provided the Landlords with notice of his intention to vacate the rental unit on November 6, 2018 and was “officially” out of the rental unit by December 31, 2018.

The monetary relief sought by the Tenant was set out in a Monetary Order Worksheet submitted with the Tenant’s amendment. First, the Tenant claimed \$316.31 in interest for the period during which *his portion* of the security deposit was held by the Landlords.

Second, the Tenant claimed for the return of double the amount of *his portion* security deposit, which was \$331.25. On behalf of the Tenant, L.C. testified that the Tenant requested his portion of the security deposit but that the Landlords told him they did not have to return it before the end of the fixed term. Further, L.C. testified the Tenant did not provide a forwarding address in writing until recently. L.C. could not recall the date the forwarding address was provided and did not submit a copy of the written correspondence into evidence. However, the parties agreed that on receipt of the

Tenant's forwarding address in writing the Landlords returned the Tenant's portion of the security deposit to him.

Finally, the Tenant claimed \$100.00 in recovery of the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenant's claim for interest on the security deposit held, section 4(1)(c) of the *Residential Tenancy Regulation* provides that interest payable to a tenant on a security deposit or pet damage deposit is 4.5% below the prime lending rate of the principal banker to the Province on the first day of each calendar year, compounded annually. As the prime lending rate was at all material times less than 4.5%, no interest is due to the Tenant. This aspect of the Application is dismissed.

With respect to the Tenant's claim for double the amount of the *Tenant's portion* of the security deposit held by the Landlord, I find that the Tenant is not entitled to the relief sought. It appears the Tenant believed that the tenancy agreement created 5 separate tenancies with corresponding security deposits. It did not. Rather, the tenancy agreement created 1 fixed-term tenancy with 5 tenants and provided for only 1 security deposit. As a result, none of the tenants were entitled to the return of the security deposit until the tenancy ended in accordance with the *Act*. However, the parties agreed that although the Tenant vacated the rental unit by December 31, 2018, before the end of the fixed term, the 4 other tenants named in the tenancy agreement remained in the rental unit and the tenancy continued. The Tenant's decision to move out of the rental unit was not sufficient to end the tenancy and give rise to obligation on the Landlords to return any part the security deposit to the Tenant and/or his roommates. Indeed, tenants are permitted to end a fixed-term tenancy only in limited circumstances described in the *Act*.

Finally, even if there was a separate tenancy agreement between the Tenant and the Landlords, which I find there was not, section 38 of the *Act* confirms that a landlord is not obligated to return a security deposit to a tenant before receiving a forwarding address in writing. In this case, L.C. was unable to provide the date a forwarding address was provided to the Landlords or a copy of the correspondence. However, all in attendance agreed the Tenant's portion of the security deposit has been returned to him. Considering the above, I find this aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim to recover the \$100.00 filing fee, I find the Tenant has not been successful and is therefore not entitled to recover the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

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 22, 2019

Residential Tenancy Branch