Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S MNRL-S FFL / MNSD FFT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlords' for:

- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit (collectively, the "**Deposits**") in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit in the amount of $1,499.42 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' for:

- authorization to obtain a return of all or a portion of the Deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlords confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their notice of dispute resolution form and that the landlords submitted no documentary evidence in support of their claim. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Naming of Landlord

On their application for dispute resolution, the landlords identified the applicant as a corporation, rather than themselves in their personal capacity. The tenants named the respondents as the landlords individually, but slightly misspelled the landlords' surname (they added an "r"). By consent of all parties, I order that the name of the applicants in the landlords' application, and the respondents in the tenants' application be amended to be the two individual landlords (in their personal capacity), with their surname spelled correctly (that is, excluding an "r"). I have recorded these changes on the cover page of this decision.

Issues to be Decided

Are the landlords entitled to:

1) a monetary order for $1,499.42;
2) keep the Deposits in partial satisfaction of the monetary order sought; and
3) recover their filing fee from the tenants?

Are the tenants entitled to:

1) the return of the Deposits; and
2) recover their filing fee from the landlords?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a fixed-term tenancy agreement starting March 1, 2019 and ending February 29, 2020. Monthly rent was $1,150. The tenant paid the landlord a security deposit of $575 and a pet damage deposit of $250. The landlord still retains the Deposits.

The parties agree that the tenants vacated the rental unit on September 29, 2019. The tenants testified that they had an altercation with another tenant of the residential property in August 2019, which the landlord did nothing to resolve. The tenants testified that they advised the landlords by text message on September 6, 2019 that they would be moving out on October 1, 2019.

The tenants submitted copies of a text message conversation with the landlords into evidence from September 6, 2019 and September 9, 2019.

September 6, 2019

Tenant

Is there anything specific that you'd like in the letter [giving notice to end tenancy]? Just starting the date and that we'd like to move out as soon as you find new tenants?

Landlord

Date and signature. And that you are ending lease before end date

Tenant

And then you'll post the place up for rent as soon as possible?

Landlord

Also you understand that because it was not within time that you may forfeit your damage deposit if new tenants are not found

I will post as soon as I have your email

September 9, 2019

Landlord

Also one thing to point out Is according to your lease agreement and RTB we need 30 days and your notice is September 6 Dash four damage deposit.

And your contact never got back to me

Tenant

So you're keeping our deposit?

Landlord

Technically it's that you owe October rent because if not 30 days notice. If I can get it rented by the first you actually save half rent because we keep the damage deposit does that make sense?

Tenant

I don’t I just don’t understand why you need to keep our damage deposit for half months rent if you’re renting it out anyways for that month.

Landlord

There’s no guarantee that it would be rented. This is allowed as per tenancy branch. And you are getting half months. We are actually being very generous because we may not get anyone in time. In order for someone to rent for October 1, they would need to give 30 days notice to their current tenant. And today is not within 30 days.

[landlord] has emailed your agreement

Tenant

OK but if you do get someone for October 1 to move in you can will still keep our deposit is half months rent for October?

Landlord

Yes and we will forfeit the remaining month regardless of any Tennant

So actually we are in a loss as well

I’m not sure if you realize that we are actually losing money in order to make sure you are OK. We have to redo everything to set up a new tenant. And make another trip to [city] which we weren’t intending to do which is also a cost.

On September 11, 2019, the parties signed a “mutual end tenancy agreement”. No copy of this document was entered into evidence.

The landlords testified that they advertised the rental unit for re-rent online on September 9, 2019. They testified that they or their agent conducted three showings of the rental unit in September 2019 (on September 14, 21, and 29). The tenants did not disagree that these showings occurred but testified that they did not receive written notice of the showing on September 29, 2019, aside from a text message which did not specify a time at which it was to occur.

The parties agree that the landlords re-rented the rental unit to a new tenant on October 15, 2019 and the new tenant paid $575 in rent for October 2019.

The tenants testified that they provided their forwarding address to the landlords by text message on September 29, 2019 and then by registered mail on November 6, 2019. They provided a Canada Post tracking number (reproduced on the cover of this decision) confirming the registered mailing.

The landlords confirmed receipt of the forwarding address by text message on September 29, 2019, but noted that the text message included only the street address and postal code of the forwarding address, and not the city the address was located in. They testified that they did not recall receive the forwarding address by registered mail.

The landlords did not return the Deposits to the tenants. They filed their application for dispute resolution claiming against the Deposits on October 10, 2019.

The landlords claim for compensation for October 2019 rent. They argue that the tenancy was for a fixed term, and the tenants breached it by ending it prior to the end date (February 29, 2020). The landlords argue that they were entitled to one month's notice of the tenant's intention to end the tenancy, and, as they did not receive that amount of notice, they are entitled to one month's rent.

The tenants argue that the landlords failed to mitigate their damages. They argue that the landlords did not make sufficient efforts to re-rent the rental unit for October 1, 2019. The tenants argue that, as they did not receive proper notice of it, the September 29, 2019 showing of the rental unit should not be considered when assessing the landlord's mitigation efforts.

The landlords also claim $249.42 for compensation for damaged caused by the tenants that was not repaired at the end of the tenancy. The landlords testified that the tenants left the bags of garbage outside the rental unit and that the rental unit was not properly cleaned.

The landlords testified that they hired a cleaner to clean the rental unit for $160, paid $58.20 to purchase a new venetian blind damaged by the tenants' dog, and paid $31.22 to repair a toilet damaged by the tenants. The landlord provided no documentary evidence in support of these claims or amount (for example, photographs of the alleged damage, invoices showing the amounts they claim, or a move-out condition inspection report).

The tenants argue that a move-out inspection was never conducted, and as such, they should not be responsible for paying any of the costs for cleaning or damage. They deny the rental unit was in a condition as alleged by the landlords. The tenants also argue that the landlords asked them to vacate the rental unit on September 29, 2019, as landlord MK had to leave the city on that day and would not be able to conduct a move-out inspection after that date.

The landlords denied that they asked the tenants to vacate the rental unit on September 29, 2019. They admit that a move-out inspection report was not completed, but stated that the reason for this was that, on September 29, 2019, landlord MK attended the rental unit when the tenants were moving out. They testified that the tenants left the rental unit but had not finished cleaning it or removing the garbage from the property. Landlord MK understood that the tenants would be returning to finish the cleaning and remove the garbage, and that she intended to conduct the move-out condition inspection with the tenants when they returned. As the tenants did not return, the landlords did not conduct a move-out inspection.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, in this case, the landlords bear the onus to prove that the tenants breached the Act or tenancy agreement, that this breached caused them the loss of one months' rent and caused them to incur the cleaning and repair costs as alleged, and that they acted reasonably to minimize their loss.

The tenants bear the onus to show that they are entitled to the return of their security deposit.

1. Cleaning and Damage to Rental Unit

Section 37 of the Act states:

> **Leaving the rental unit at the end of a tenancy**
>
> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

The landlords provide no documentary evidence supporting their claims that the rental unit was not adequately cleaned or was damaged. They did not submit any documents corroborating the costs they alleged they incurred as a result of this failure of the tenants.

As such, I find the landlords have failed to demonstrate on a balance of probabilities that the rental unit was damaged or unclean as alleged by the landlords, or, if it was, that the landlords incurred the costs they allege they did as a result.

As such, I decline to award the landlords any amount for this portion of their claim.

2. Unpaid October Rent

Section 45(2) of the Act states:

Tenant's notice

45(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

A tenant is required to comply with all of these conditions before he or she may validly end a fixed-term tenancy. In this case, I find that the tenants failed to meet the conditions set out in section 45(2)(b): they gave notice on September 6, 2019 to end the tenancy on September 30, 2019. This is earlier that than February 29, 2020, the date the tenancy was to end.

Accordingly, the tenants are not entitled to rely on the fact that they provided notice prior to their leaving the rental unit. The terms of the tenancy agreement (and the provisions of the Act) do not allow the tenants to unilaterally cancel the tenancy agreement.

The tenants testified that they signed a “mutual end tenancy agreement”. No such document was submitted into evidence. However, the tenants’ testimony was that it was created only after the tenants informed the landlords of their intention to unilaterally end the fixed-term tenancy. As such, I find that the signing of a “mutual end tenancy agreement” does not sanction the tenants’ breach.

I find that by ending the fixed-term tenancy unilaterally, the tenants clearly indicated their intention to breach the tenancy agreement (that is, to end the tenancy prior to the end of the term). I find that this is an “anticipatory breach” of the tenancy agreement, which is also known in law as a repudiation of the contract.

In the legal textbook *The Law of Contract* (3rd Ed, (1994) at p 600) Professor Fridman writes:

> Anticipatory breach occurs when a party, by express language or conduct, or as a matter of implication from what

> he has said or done, repudiates his contractual obligations before they fall due.
>
> […]
>
> The authorities reveal that, for this type of breach to occur the following must be established: (1) conduct which amounts to a total rejection of the obligations of the contract; (2) lack of justification for such conduct. If, to these, is added the acceptance by the innocent party of the repudiation, then the effect will be to terminate the contract.

I find that, by purporting to end the fixed-term tenancy early, the tenants rejected their obligation to remain in the rental unit until the end of the term. This rejection was unjustified. The Act is clear as to how a fixed-term tenancy may be ended.

I find that, by signing the "mutual end tenancy agreement", the landlords accepted the tenants' repudiation, and terminated the tenancy agreement.

Professor Fridman, at pages 615 and 616, writes of the effect of an acceptance of repudiation:

> Since the contract is discharged by breach, not agreement, the innocent, injured party has the right to sue. He may sue for damages immediately, without waiting for the time when the contact should have been performed to arrive.

Applied to this case, as a result of the tenants' breach of the tenancy agreement, the landlords may make a monetary claim for damages suffered as a result of this breach.

I find that as a result of the tenants' breach, the landlords were unable to collect rent for October 1 to 15, 2019, valued at $575.

As the landlords re-rented the rental unit on October 15, 2019, they are not entitled to compensation from the tenants from that point on.

I find that, by showing the rental unit three times in September 2019 to prospective rents, and by re-renting it on October 15, 2019, the landlords acted reasonably to minimize their loss. I do not find it reasonable to expect that the landlords would re-rent the rental unit for October 1, 2019.

As such, I order the tenants to pay the landlords $575 representing the landlords' loss of rental income for the first half of October.

3. Security Deposit

Section 38(1) of the Act states

> **Return of security deposit and pet damage deposit**
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> 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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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.

I find that the tenancy ended on September 30, 2019 and that by making their application for dispute resolution on October 10, 2019, the landlords complied with section 38(1)(d).

I have ordered that the tenants pay the landlords $575. Pursuant to section 72(2), they may deduct this amount from the Deposits. The landlords must return the balance of the Deposit to the tenants.

As both parties have bene partially successful in their applications, I decline to order that either reimburse the other their filing fee.

Conclusion

I order that the landlords pay the tenants $250, representing the return of the balance of the Deposits.

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: March 6, 2020

Residential Tenancy Branch