



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's 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 double the value of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlord, the landlord's agent, the tenant, and the tenant's English language interpreter attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to represent her at this hearing. The tenant confirmed that his interpreter had permission to assist him at this hearing. This hearing lasted approximately 56 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to the return of double the value of his security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 15, 2019 and ended on September 15, 2019. The tenant moved into the rental unit on August 6, 2019. Monthly rent in the amount of \$1,950.00 was payable on the first day of each month. A security deposit of \$1,950.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties for a fixed term from July 15, 2019 to June 30, 2020. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission from the tenant to keep any part of the security deposit. The landlord's application to retain the tenant's security deposit was filed on December 18, 2019.

The tenant said that he provided a written forwarding address to the landlord on September 20, 2019, by way of a letter that was personally handed to the landlord on the same date. The landlord's agent said that the landlord did not receive a written forwarding address from the tenant, except by way of the tenant's application.

The landlord seeks a monetary order of \$1,950.00 plus the \$100.00 application filing fee. The tenant disputes the landlord's application.

The landlord seeks \$1,950.00 for a loss of rent for October 2019. The landlord's agent stated the following facts. The tenant did not provide one month's notice to vacate the rental unit. The tenant signed a fixed term tenancy agreement, ending on June 30, 2020. The rental unit is still not re-rented, it is located near a university, and most students obtain housing by September 2019, so it was more difficult to rent. The housing rental prices in the area drop lower after September 2019, but the landlord was not willing to reduce it below the \$1,950.00 per month rental rate, so it was harder to rent because no one wanted to pay that much. The landlord put more furniture in the unit, to mitigate losses. The landlord posted an advertisement for re-rental online immediately, but she did not provide a copy for this hearing because she had too many properties to deal with. There were two inquiries for the unit, a screenshot of a text message conversation with one tenant was provided in a different language, and the landlord did not provide a certified written English translation of same.

The tenant disputes the landlord's claim for a loss of rent. He said that the landlord told him to leave the rental unit on September 6, 2019. He stated that the landlord posted the rental unit for re-rental as of September 1, 2019.

The tenant seeks a monetary order of \$4,875.00 plus the \$100.00 application filing fee. The landlord disputes the tenant's application.

The tenant seeks a return of double the value of the security deposit of \$1,950.00, totalling \$3,900.00. The tenant seeks a return of half a month's rent of \$975.00 from September 15 to 30, 2019. The tenant stated that he did not live at the rental unit for the last two weeks of September 2019. He claimed that he did not give notice to leave the rental unit because the landlord requested him to leave by September 15, 2019, since he complained about the hot water issue in the rental unit.

The landlord disputes the tenant's claims. The landlord's agent confirmed that the tenant paid rent for all of September 2019, but the landlord was not willing to return \$975.00 from that rent, because the tenant did not provide notice to move out. He said that on September 20, 2019, the landlord was told that the tenant moved out. He agreed that the hot water complaint was made by the tenant but denied that the tenant was asked to move out by the landlord.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I find that the landlord and tenant entered into a fixed term tenancy for the period from July 15, 2019 to June 30, 2020.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, he may have to pay for rental losses to the landlord. In this case, the tenant ended the tenancy on September 15, 2019, prior to the end of the fixed term on June 30, 2020. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses she incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for one month's rental loss of \$1,950.00 for October 2019, without leave to reapply.

I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when she advertised the unit for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. I find that the landlord failed to show how she mitigated losses in her efforts to re-rent the unit. I do not find that adding furniture to the unit mitigated the landlord's rental losses. The unit is still not rented, despite being located in a busy and popular area near the university. The landlord's agent stated that no one wanted to pay the \$1,950.00 rent when other units in the area were lowering their rent prices, yet the landlord still failed to lower the rent amount. I find that this contributed to the landlord's failure to mitigate her losses.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for a return of half of September 2019 rent of \$975.00. I find that the tenant failed to give notice to the landlord before moving out. I find that the landlord would not have been able to re-rent the unit in the middle of the month when the tenant moved out on September 15, 2019.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the 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 deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on September 15, 2019. The landlord did not return the security deposit to the tenant. I find that the tenant failed to provide sufficient proof of the written forwarding address that he said he gave to the landlord. The tenant did not provide a copy of the actual note he said he handed to the landlord on September 20, 2019. The tenant failed to provide witness evidence that he handed the note to the landlord. The landlord denied receipt. I find that the landlord received the tenant's forwarding address by way of the tenant's application for this hearing, so she was sufficiently served, as per section 71(2)(c) of the *Act*. However, service by way of the tenant's application is not permitted by section 88 of the *Act*. Therefore, I find that the tenant is not entitled to double the value of his security deposit.

Although the landlord's right to claim against the deposit for damages was extinguished as per sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports, the landlord made a loss of rent claim, not a damage claim.

Over the period of this tenancy, no interest is payable on the tenant's security deposit. I find that the tenant is not entitled to double the value of his deposit, only the regular return of \$1,950.00.

As the tenant was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$2,050.00 against the landlord. 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.

The remainder of the tenant's 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: March 19, 2020

Residential Tenancy Branch