



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDCL-S, FFL**
 TT: FFT, MNSD

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was primarily represented by their building manager.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties agreed that the name of the corporate respondent provided by the tenant in their application is not a business or company but simply the misspelled first name of someone the tenant believes to be the landlord. By consent of the parties the application was amended to identify the correct landlord who is named in the style of cause for this decision.

Issue(s) to be Decided

Is either party entitled to the security deposit for this tenancy?

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties signed a tenancy agreement on December 28, 2020 for a fixed term tenancy scheduled to commence on February 1, 2021. A copy of the tenancy agreement was submitted into evidence. The agreement provides that first month's rent of \$1,330.00 is payable on January 15, 2021 with subsequent rent payable on the first of each month. The agreement states that "if the landlord has not received the said rent the Tenant is considered to have forfeited their right to rent the above unit. The landlord may rent the above unit to someone else and the landlord can keep the security deposit for loss of rental income". A security deposit of \$665.00 was paid when the tenancy agreement was signed and is still held by the landlord.

The tenant gave notice on December 30, 2020 to cancel the tenancy and provided a forwarding address. The landlord filed their present application on January 2, 2021 for authorization to retain the deposit pursuant to the written tenancy agreement.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case I accept the evidence of the parties that the tenant provided their forwarding address in the letter dated December 30, 2020. The landlord applied for authorization to retain the deposit on January 2, 2021, within the 15 days provided under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the parties that they signed a tenancy agreement on December 28, 2020 and the tenant paid a security deposit of \$665.00 on that date. While the tenant submits that they did not agree to enter a tenancy at that time as they needed to confirm their continued eligibility with the Ministry of Social Development, I find that by signing a tenancy agreement and paying a deposit an enforceable tenancy was created on that date.

I find that the tenancy agreement signed by the parties clearly indicates that first month's rent is payable on January 15, 2021 and that failure to pay the rent will result in a loss of the security deposit. I also note that the tenancy agreement contains a liquidated damage clause wherein the tenant is obligated to pay damages in the amount of \$500.00 if the tenant terminates the tenancy prior to the fixed-term. The landlord stated that they are not seeking to enforce the liquidated damage clause and simply seeking authorization to retain the security deposit for the tenancy.

Section 45(2) provides that a tenancy may end a fixed-term tenancy no earlier than the date specified in the agreement. As such, I find that the effective date of the tenant's notice of December 30, 2020 would be January 31, 2022. Again, the landlord stated they are not seeking any unpaid rent under the tenancy agreement.

I find that the parties entered into an enforceable tenancy agreement when signing and payment of the security deposit was made. I find that a term of the tenancy agreement was that the tenant forfeits their security deposit if they fail to pay the first month's rent on January 15, 2021. The parties agree that the tenant failed to pay any rent under the tenancy agreement. As such, I find that the tenant has extinguished their right to the security deposit for this tenancy. I find that the landlord is entitled to retain the deposit in accordance with the tenancy agreement.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$100.00, allowing them to recover the amount payable under the tenancy agreement, retain the security deposit for this tenancy and to recover their filing fee. The tenant must be served with this Order as soon as possible. Should the tenant 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: February 26, 2021

Residential Tenancy Branch