



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, MNRL-S, FFL**

Introduction

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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*.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

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 agree on the following facts. This fixed-term tenancy agreement began on May 1, 2021 and was scheduled to end on April 30, 2022. The monthly rent was \$1,680.00 payable on the first of each month. The tenants paid a security deposit of \$840.00 at the start of the tenancy. Pursuant to the tenancy agreement the tenants were responsible for paying 1/3 of the utilities for the property.

No condition inspection report was prepared at anytime for this tenancy. Instead, the landlord hand wrote on a page of the tenancy agreement "New paint, New floor in bedrooms, den & sitting room" which was initialled by the tenants.

The parties agree that the tenants gave written notice to the landlord on September 25, 2021 to end the tenancy and vacated the suite on October 1, 2021.

There was a previous hearing and decision under the file number on the first page of this decision. That proceeding dealt with the tenants' application seeking a monetary award which included the return of the security deposit for this tenancy. In that decision the presiding arbitrator writes:

In this case, the parties agree that the Tenants moved out on October 1, 2021. The Landlord acknowledged receiving the Tenants' forwarding address that same day.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until October 16, 2021) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application

for dispute resolution. The Landlord provided the file number for his application which indicates he did not file the application against the deposit until January 3, 2022. I find the Landlord breached section 38(1) of the Act by failing to act within the allowable 15- day window.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$840.00 x 2). I award the Tenants \$1,680.00.

The landlord now seeks authorization to retain the security deposit for this tenancy.

The landlord submits that the rental unit required repainting, cleaning and work due to the condition at the end of the tenancy. The landlord submitted some photographs of the suite in support of their claim. The landlord now seeks a monetary award of \$5,118.55 for the cost of restoring the suite to its pre-tenancy condition, including cleaning, replacement of missing fixtures and repainting the suite.

The landlord submits that they incurred rental income losses as a result of the tenants' early end of the fixed-term tenancy. The landlord says they posted advertisements for the suite in an effort to minimize their rental income losses but were still only able to find a new occupant for December 1, 2021. The landlord submitted copies of some online advertisements as evidence of their effort to mitigate losses. The landlord seeks a monetary award of \$3,360.00 for the loss of rental income, the equivalent of rent for the months of October and November 2021.

The parties agree that the tenants failed to pay 1/3 of the utilities as required for the month of September 2021 and that the amount owing is \$44.89. The tenants make some submissions regarding their displeasure with the condition of the suite and lack of services which led to their vacating the suite.

Analysis

The principle of *res judicata* prevents me from making a decision on a matter that has been conclusively decided by another arbitrator of the Branch. The issue of the security deposit for this tenancy was the subject of the earlier decision of January 25, 2022 where the tenants were issued a monetary order to recover the value of double the security deposit.

I find I have no ability to consider a matter that has been the subject of a final and binding decision by another arbitrator appointed under the *Act*. Accordingly, I dismiss this portion of the landlord's claim seeking authorization to retain the security deposit for this tenancy.

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 am satisfied with the undisputed testimony of the parties and the documentary evidence that the tenancy agreement provides that the tenants are responsible for paying 1/3 of the utilities. I accept the evidence of the parties that the tenants failed to pay utilities for September 2021 and the outstanding amount is \$44.89. I also find that the landlord gave written notice of this outstanding amount to the tenants.

I find the submissions of the tenants regarding their complaints about the living condition to not excuse them from their obligations under the tenancy agreement. I find much of the complaints of the tenants shown in their correspondence with the landlord to be subjective, not supported in the evidence and ultimately of no consequence as the tenants remained obligated to pay their utilities pursuant to the tenancy agreement.

I therefore issue a monetary award in the landlord's favour of \$44.89.

Residential Tenancy Regulation 20 sets out the information that must be contained in a standard condition inspection report for a tenancy. I find that a single hand-written line on a tenancy agreement is not a substitute for a proper inspection report completed in accordance with the *Act* and regulations. I find the single line to be of limited probative value and I am unable to find, on a balance of probabilities, that the damages now cited by the landlord are attributable to the tenants. I further find that much of the photographs submitted by the landlord to show some wear and tear as would be expected from any occupancy. I am not satisfied based on the evidence that the tenants caused damage to the rental unit and therefore find the landlord has not

established their claim on a balance of probabilities. This portion of the landlord's application is dismissed.

I find there to be insufficient evidence to show that the landlord failed to comply with a material term of the tenancy agreement allowing the tenants to end the fixed term tenancy on a date earlier than that specified under the tenancy agreement pursuant to section 45 of the *Act*. While I accept that the tenants were unhappy at the end of the tenancy and the relationship between the parties had deteriorated, based on the evidence I am unable to find that the landlord failed to comply with the tenancy agreement allowing the tenants to end the fixed term tenancy earlier than the date specified in the agreement.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenants gave notice to the landlord to end the tenancy on September 25, 2021 and vacated the suite on October 1, 2021. The landlord submits that they took efforts to re-rent the unit but were unsuccessful until December 1, 2021. The landlord provided some evidence of advertisements placed for the rental unit in October 2021.

Based on the evidence, while I find that the tenants breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated that the full amount of losses incurred are due to the tenants rather than the landlord's failure to take fully mitigate their losses. While I accept that the landlord took some steps, I do not find it reasonable that the landlord was not able to find a new occupant after being provided nearly eight weeks' notice. I take notice of the ongoing rental

housing crisis in the province and find it is unreasonable that the landlord was not able to find a new occupant until December 1, 2021.

I find that while the landlord incurred some rental income losses, the full amount claimed is not attributable to the tenants but contributed in part by the landlord's failure to enter a new tenancy agreement earlier than December 1, 2021. I therefore find it appropriate to issue a monetary award in the amount of \$1,680.00, the equivalent of one month's rent to the landlord.

As the landlord was partially successful in their application I find it appropriate to order that the landlord may recover \$50.00, half of the filing fee for their application from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,744.89. The tenants must be served with this Order as soon as possible. Should the tenants 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: August 11, 2022

Residential Tenancy Branch