



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant N.G.A.G. (the "tenant"), and the landlord's agents J.D. and A.D. (the "agents") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Amendment

In the hearing the tenant testified to the correct legal name of herself and tenant A.O.E.G.B. In accordance with section 64 of the Act I amend both the landlord and tenant applications to correctly state the full legal name of both tenants.

Preliminary Issue- Service

Both parties agree that they were each served with the other's application for dispute resolution and evidence. I find that both parties were served with the other's application for dispute resolution and evidence in accordance with the Act.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit?
2. Are the tenants entitled to recover the filing fee for this application from the landlord?
3. Is the landlord entitled to a Monetary Order for damages?
4. Is the landlord entitled to a Monetary Order for damage or compensation under the Act?
5. Is the landlord entitled to a Monetary Order for unpaid rent?
6. Is the landlord entitled to retain the tenants' security and pet damage deposits?
7. Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

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

Both parties agreed to the following facts:

- this tenancy began on December 1, 2021
- the tenants moved out on July 1, 2022
- the tenancy was a fixed term tenancy ending on December 1, 2022
- monthly rent in the amount of \$1,700.00 was payable on the first day of each month,
- a security deposit of \$850.00 was paid by the tenants to the landlord
- a pet damage deposit of \$850.00 was paid by the tenants to the landlord

The agents testified that they were not sure on what date the security and pet damage deposits were received by the landlord. The tenant testified that the landlord was provided with both deposits on November 27, 2021. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord did not ask the tenants to complete a joint move in or move out condition inspection report and that the landlord did not complete a move in or move out condition inspection report. No documentary evidence regarding the move in condition of the subject rental property was entered into evidence.

The tenant testified that she personally served the landlord's care aid with her forwarding address on August 19, 2022. No proof of service documents were entered into evidence. The agents testified that the landlord did not receive the tenant's forwarding address at this time. The tenant testified that she re-served the landlord with her forwarding address via posting and registered mail on January 31, 2023. A registered mail receipt for same was entered into evidence. The agents testified that the landlord received the tenant's forwarding address sent via registered mail on January 30, 2023.

The agents testified that on June 2, 2022 the tenants provided the landlord with notice to end the tenancy effective July 1, 2022. The tenant testified that she provided the landlord with notice to end tenancy on June 1, 2022. The tenant testified that after giving notice to end tenancy, the landlord asked for photos of the subject rental property to advertise the unit for rent and she provided them to the landlord. The agents testified that they started advertising the subject rental property for rent as soon as they received notice but were not able to find new tenants for July 2022. The agents testified that they believed the subject rental property was advertised at the same rental rate as that paid by the tenants. The agents testified that the landlord is seeking to recover lost rental income for July 2022 in the amount of \$1,700.00.

The agents testified that the landlord is seeking the following damages from the tenants:

Item	Amount
Cleaning	\$450 plus GST
Faucet replacement	\$170 plus GST
Replace toilet seat	\$65.00 plus GST
Labour	\$150.00 plus GST
Dryer repair	\$185.00 plus GST

The agents testified that the labour listed in the above receipt was for installing the faucet, toilet seat, and re-installing cupboards that the tenants removed in the kitchen.

The tenant testified that the cupboards were not properly attached at the start of the tenancy and the landlord was aware of this.

The agents testified that tenant A.O.E.G.B. 's little brother was smoking outside and threw his but in the recycling bin. The agents testified that this started a fire which destroyed the recycling bin. The agents testified that it cost \$100.00 to replace. No receipts for same were entered into evidence. The tenant testified that tenant A.E.G.B.'s little brother was asleep at the time of the fire and did not start the fire.

The agents testified that the tenants had four guests at the subject rental property for a period of three weeks and that this caused the landlord to suffer increased water and electricity costs. The agents testified that the landlord is seeking \$300.00 for the guests' stay at the subject rental property.

The tenant testified that her four guests, two adults and two children, stayed at the subject rental property for 9 days. The tenant testified that the landlord was advised and said ok but after three days complained about the price of the water bill. The agents testified that the landlord was not notified in advance.

Analysis

Loss of rental income

Section 45(2)(c) of the Act states that 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.

Based on the testimony of both parties, I find that the tenants breached section 45(2) of the Act by ending their fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy.

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

According to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

I find that in ending their fixed term tenancy agreement early, the tenants decreased the rental income that the landlord was to receive under the tenancy agreement. I accept the agents' undisputed testimony that the landlord started renting the subject rental property as soon as possible. I find that this testimony is supported by the tenant's testimony that the landlord asked for photographs of the subject rental property for marketing the property for rent.

I find that the landlord mitigated their damages by advertising the subject rental property for rent after learning of the tenant's decision to break the fixed term tenancy agreement. I accept the agents' undisputed testimony that the landlord was not able to re-rent the subject rental property for July 2022. Pursuant to sections 7 and 67 of the Act, the tenants are required to compensate the landlord for that loss of rental income. I award the landlord a Monetary Order for \$1,700.00.

Damages

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The agents claimed that the tenants or person permitted on the property damaged the toilet seat, faucet, dryer, and garbage bin. The tenant denied that the tenants or person permitted on the property by the tenants damaged any of the above items. The landlord testified that the tenants left the kitchen cupboards unattached. The tenant testified that the cupboards required re-affixing at the start of this tenancy.

The landlord did not complete a move in or move out condition inspection report and did not enter into evidence photographs of the move in or move out condition of the claimed items. I find that the landlord has not proved, on a balance of probabilities, that the tenants damaged the toilet seat, faucet, dryer or garbage bin. I find that the landlord has not proved that the tenants' caused the cupboards to detach. The above claims, including the claim for labour are therefore dismissed without leave to reapply.

The landlord testified that the subject rental property was dirty and smelled of marijuana at the end of the tenancy. No documentary evidence to support this claim were entered into evidence. The tenant testified that the subject rental property did not smell of

marijuana and was clean. I find that the landlord has not met their burden of proof and has not proved that the subject rental property was dirty and smelled of marijuana. The landlord's claim for cleaning is therefore dismissed without leave to reapply.

Section 11 of the tenancy agreement states:

- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit
- 2) The landlord must not impose restrictions guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests

According to section 11 of the tenancy agreement I find that the landlord is not permitted to charge the tenants any extra charge for overnight accommodation of guests. The landlord's application for same is dismissed without leave to reapply.

Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a move in condition inspection report.

The agents testified that the landlord did not complete a move in condition inspection report at the start of the tenancy. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection report contrary to section 24 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlord's eligibility to claim against the security deposit for **damage** arising out of the tenancy is extinguished.

Security Deposit Doubling Provision

I find that the tenant has not proved that the landlord was served with the tenant's forwarding address in August of 2022 as no proof of service documents were entered into evidence. I find that the tenant has proved that the landlord was served with her forwarding address via registered mail on January 31, 2023. The agents confirmed receipt of same on January 30, 2023. I find on a balance of probabilities the agents were mistaken on the date of receipt as the forwarding address was not mailed until January 31, 2023. I find that the landlord was deemed served on February 5, 2023 in accordance with sections 88 and 90 of the Act.

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 security deposit.

The landlord applied for dispute resolution for authorization to retain the tenant's deposits on February 5, 2023.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for **damage** to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, the landlord is not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 24 of the Act. However, the extinguishment provisions only apply to claims for **damage, not for unpaid rent or loss of rental income**. I find that the landlord was entitled to hold the tenant's deposits until the outcome of this decision as part of the landlord's claim is for loss of rental income. The tenant is therefore not entitled receive double the security and pet damage deposits.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment

from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under section 24 of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security and pet damage deposits and the interest accrued on those deposits in partial satisfaction of the landlord's monetary award.

I accept the tenant's undisputed testimony that the landlord received the tenant's security and pet damage deposits on November 27, 2021. I find that as of the date of this hearing, October 24, 2023 the interest accrued on the security and pet damage deposits totals \$26.97.

As I have determined that the landlord is entitled to retain the tenant's security deposit and accrued interest, I dismiss the tenant's application for the return of the security deposit and recovery of the filing fee, without leave to reapply.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Loss of rental income for July 2022	\$1,700.00
Filing Fee	\$100.00
Less security and pet damage deposits	-\$1,700.00
Less interest earned on security and pet damage deposits	-\$26.97
TOTAL	\$73.03

The landlord is provided with this Order in the above terms and 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: October 25, 2023

Residential Tenancy Branch