



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 24, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenants both attended the hearing.

The Tenants confirmed receipt of the Landlord’s Notice of Dispute Resolution Proceeding. I find this was sufficiently served. The Landlord stated he sent his evidence to one of the Tenants, CM, via registered mail and she acknowledged receipt. The Landlord sent this evidence to the other Tenant, DE, via email and he acknowledged receipt of the email, but stated it did not contain any documentary evidence. The Landlord did not submit any screenshots of proof of service showing what was contained in that email. Without further proof of service, I find the Landlord has failed to sufficiently demonstrate that he served both Tenants with his evidence in accordance with the Act and the Rules. I find the Landlord’s evidence is not admissible.

The Landlord acknowledged receipt of the Tenant’s Notice of Dispute Resolution Proceeding package. I find this was sufficiently served. However, the Tenants failed to serve any of their evidence. As such, I find it is not admissible and will not be considered.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules

of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$2,800.00 and was due on the first of the month.
- The Tenants were under a fixed term tenancy agreement until the end of June 2023.
- One of the Tenants moved out on March 1, 2023, and the other moved out on April 1, 2023.
- The Landlord still holds a security deposit in the amount of \$1,400.00, and a pet deposit in the amount of \$200.00.
- The Tenants provided, and the Landlord received, the Tenant's forwarding address in writing on April 11, 2023.
- The Landlord filed his application against the deposits on April 18, 2023, for rental losses.

The Landlord is seeking the following items:

- 1) \$2,800.00 – April Rent

The Landlord stated he is seeking this amount because the Tenants failed to pay any rent for this month, despite the fact that they were still under a fixed term tenancy agreement. The Landlord was unclear about when he re-rented to unit, and at what

monthly rent it was re-rented for. The Landlord did not speak to when the unit was re-posted and what he did to mitigate his losses after the Tenants vacated.

The Tenants feel they gave adequate notice, and they do not feel they should have to pay this amount.

- 2) \$297.82 – BC Hydro Bill – Feb/March
- 3) \$139.63 – Fortis Bill – March

The Tenants agree that they owe this amount.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Next, I turn to the Tenant's application. Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants were both moved out of the rental unit by April 1, 2023 which I find reflects the end of the tenancy. The Landlord confirmed

that he got the Tenant's forwarding address in writing on or around April 11, 2023. I find he received the forwarding address on that date. The Landlord filed his application against the deposit on April 18, 2023, for unpaid rent. I find extinguishment is not relevant to this case, since extinguishment only applies to claims for damage and this was for unpaid rent. I find the Landlord filed in time, and I decline to award double the security and pet deposit. The deposits held by the Landlord will be addressed further below.

Next, I turn to the Landlord's claim for monetary compensation.

1) \$2,800.00 – April Rent

I note the Tenants were under a fixed term tenancy agreement until the end of June 2023. They moved out early, and breached this agreement, and I find this was a violation of section 45(2) of the Act. I find there is insufficient evidence showing the Tenants had any legal basis to end the tenancy early. However, I find the Landlord has also failed to sufficiently demonstrate that he mitigated his losses for April 2023. There is no evidence or testimony speaking to when the rental unit was re-listed, and at what price, and also when it was re-rented. With insufficient evidence supporting mitigation, I find the Landlord is not entitled to this amount. That being said, I am satisfied the Tenants breached the Act, and ought to be liable for some damages.

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is appropriate, I award \$500.00 for this item.

I note the Landlord failed to amend his application to include any months beyond April or for any other type of loss, so his claim is limited to what he specifically applied for (April rental loss).

2) \$297.82 – BC Hydro Bill – Feb/March

3) \$139.63 – Fortis Bill – March

I award these amounts, since the Tenants do not dispute that they owe these bills.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I decline to award the Tenant with recovery of the filing fee as they were not successful with the application.

Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenants. The Tenant's security deposit has accumulated some interest, as follows, but only for 2023 in the amount of \$28.07. This is added to the deposit balances.

In summary, I grant a monetary order based on the following:

Claim	Amount
Total of Landlord's items claimed	\$937.45
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$1,628.07)
TOTAL:	(\$590.62)

The Landlord must return the balance of the deposits in the amount of \$590.62.

Conclusion

The Tenants are granted a monetary order in the amount of **\$590.62**, as specified above. This order must be served on the Landlord. If the Landlord fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: December 11, 2023