



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing dealt cross Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The landlord applied for:

- a Monetary Order as compensation for loss or damage under section 67 of the Act; and
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act.

The tenant applied for:

- authorization to obtain a return of their security deposit pursuant to section 38; and
- a Monetary Order as compensation for loss or damage under section 67 of the Act; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties confirmed that they had both exchanged their Notice of Dispute Resolution and Application for this hearing.

Service of Evidence

Based on the submissions before me, I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act.

Based on the submissions before me, I find that the tenant's evidence was served to the landlord in accordance with section 88 of the Act.

Issues to be Decided

Is the landlord entitled to a Monetary Order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

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

Is the tenant entitled to the equivalent of 12 months of rent as compensation?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, **but will refer only to what I find relevant for my decision.**

Evidence was provided showing that this tenancy began on February 1, 2021, with a monthly rent of \$2,000.00, due on the first day of the month. The rent at move out on April 4, 2023 was \$2750.00 per month, due on the first of each month. AW testified that on April 1, 2023 the tenant sent a message to her mother advising her that he was in the process of moving out. AW testified that the parties had signed a new agreement on each anniversary and raised the rent by consent. AW testified that each contract was to be for a year. AW testified that the tenant moved out on April 4, 2023 and seeks the loss of rent for April 2023 plus the filing fee for a claim of \$2850.00.

XZ testified that he advised the landlord on April 1, 2023 that he was in the process of moving out and that he didn't leave until April 4, 2023. XZ testified that he gave her three days notice. XZ testified that the landlord illegally raised the rent each year and forced him to sign a new tenancy agreement. XZ testified that due to unexpected difficulties he had to move out before the term of the tenancy ended on January 31, 2024. XZ testified that he seeks the rental overpayment of \$2400.00 for the second year of the tenancy and \$1500.00 of rental overpayment for the third year of the tenancy. XZ

testified that he also seeks 12 months rent as compensation as the landlord acted in bad faith.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, **the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.**

Under 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. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant 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 landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I address the landlords claim and my findings as follows:

Loss of Rent April 2023

Tenant's notice

- 45** (2)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.

Both parties agreed that they had signed a one-year term and that the rent was due on the first of the month. I find that the tenant ended the tenancy earlier than scheduled and without proper notice as required above, accordingly; the landlord is entitled to the

loss of rent for April 2023 in the amount of \$2750.00. The landlord is also entitled to the recovery of the \$100.00 filing fee for a total award of \$2850.00.

I address the tenant's application and my findings as follows:

Rental Overpayment

The tenant testified that the landlord "raised the rent illegally". The tenant knowingly and willingly signed new tenancy agreements and only filed to dispute the increases almost two months after the tenancy ended and did not take any steps to address it during the tenancy. I find that the increases were by consent and that the tenant is not entitled to the recovery of those increases, accordingly; I dismiss this portion of the tenant's application.

12 Months Rent Compensation

I asked the tenant if the landlord served him a Two Month Notice to End Tenancy for Landlords Use of Property, the tenant replied "no, never". Section 51 states the following:

Section 51(1) of the Act requires that a landlord, **who gives a notice under section 49, including the form of notice that is the subject of this application**, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The tenant confirmed on several occasions that he did not receive a notice on the approved form. As a result of there not being an actual notice to end tenancy on the approved form, the tenant is not entitled to any compensation; accordingly, I dismiss this portion of the tenants claim.

As the tenant has not been successful in his application, he is not entitled to the recovery of the filing fee, and I therefore dismiss that request without leave to reapply.

Conclusion

The landlord has established a claim for \$2850.00. I order that the landlord retain the \$1375.00 deposit and \$26.12 interest in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1448.88. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety 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: December 21, 2023

Residential Tenancy Branch