



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: MNDCL-S, LRSD, FFL
Tenant: MNSD, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or monetary loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenant’s application and evidence. In accordance with sections 88 and 89 of the Act, I find the landlords duly served with the tenant’s application and evidence.

The tenant confirmed receipt of the landlords’ application and evidence, with the exception of the audio recording, which was not served on the tenants. In accordance with sections 88 and 89 of the Act, I find the tenant duly served with the landlords’ application and evidence, with the exception of the audio recording. As the audio

recording was not properly served on the tenant in accordance with the Rules of Procedure and the Act, the audio recording was excluded for the purposes of this hearing.

Issue(s) to be Decided

Are the landlords entitled the monetary orders requested in their application?

Is the tenant entitled to the return of their security or pet damage deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me, and my findings around it are set out below.

This fixed-term tenancy began on November 1, 2023, and was to end on October 30, 2024. The tenancy ended on November 30, 2023 after a Mutual Agreement to End Tenancy was signed. Monthly rent was set at \$2,000.00, payable on the first of the month. The landlords collected a security and pet damage deposit of \$1,000.00 each deposit. The landlords returned \$1,000.00 to the tenant, and filed an application on December 1, 2023 requesting the following monetary orders:

Item	Amount
Loss of rental income	\$1,000.00
Travel time and time spent investigating issues by landlords	\$212.50
Professional cleaning invoice	\$160.00
Filing Fee	\$100.00
Total Monetary Order Requested by the Landlords	\$1,472.50

The landlords testified that the tenant had agreed that they could retain \$1,000.00 if the landlords would agree to allow an early termination of the tenancy. The landlords

testified that this was part of the audio recording that was excluded for the purposes of this hearing.

The landlords also argued that the original agreement was for the tenant to vacate the premises on December 31, 2023, but the tenant refused to sign the Mutual Agreement for this date. The landlords testified that they were unable to fill the vacancy until December 15, 2023, losing half a month's rent.

The landlords also requested reimbursement of the costs and time spent attempting to address the tenant's complaints before this tenancy had ended.

The tenant filed their own application on January 26, 2024, and denies that they had allowed to landlords to retain any portion of their deposits. The tenant is also disputing the other claims as they feel that they had raised legitimate concerns during this tenancy.

Analysis

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 or 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. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their application.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];

- (i.1) section 45.1 *[tenant's notice: family violence or long-term care];*
- (ii) section 46 *[landlord's notice: non-payment of rent];*
- (iii) section 47 *[landlord's notice: cause];*
- (iv) section 48 *[landlord's notice: end of employment];*
- (v) section 49 *[landlord's notice: landlord's use of property];*
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify];*
- (vii) section 50 *[tenant may end tenancy early];*

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

A copy of the Mutual Agreement was submitted in evidence, which was completed using the proper RTB-8 Form, and signed by both parties. The Mutual Agreement has an effective date of November 30, 2023. Although the landlords claimed that they had originally agreed on a different date, a signed Mutual Agreement is final and binding. I do not find that the evidence supports that this form was signed under duress or coercion. As stated in the Act, and as clearly stated on the RTB-8 Form, "By signing this form, both parties understand and agree the tenancy will end with no further obligation

between landlord(S) or tenant(s). Although there may have been an offer or discussion by the tenant that the landlords may retain \$1,000.00 of the tenant's deposits, I am not satisfied that the landlords had provided sufficient evidence to support that this offer was finalized. The Mutual Agreement does not include any addendums or notations that the tenant had allowed the landlord to retain any portion of their deposit. By signing the Mutual Agreement to End Tenancy, the landlords released the tenant from any further obligations under the original fixed-term agreement, which includes any lost rental income associated with an early termination of a fixed-term tenancy. Accordingly, I dismiss the landlords' monetary claim of \$1,000.00 without leave to reapply.

The landlords also requested a monetary order of \$212.50 to cover the time and costs of addressing the tenant's complaints. In light of the evidence before me, I am not satisfied that the landlords had 1) suffered a loss in the amount claimed and 2) that this loss stems directly from the tenant's contravention of the Act or tenancy agreement. In fact, I find that the issues described relate to the landlords' obligations pursuant to section 32 of the Act.

Lastly, the landlords requested reimbursement of a cleaning invoice in the amount of \$160.00. Although the landlords suspect that the tenant had intentionally caused the landlords this expense, I do not find this belief to be supported in evidence. I find that the landlords had made the decision to hire a professional cleaner without any obligation for the tenant to reimburse the landlords. Accordingly, this claim is also dismissed with leave to reapply.

As the landlords were not successful in their claims, their application to recover the filing fee is also dismissed without leave to reapply.

I note that the landlords' application made reference to the tenant's failure to leave the home in reasonably clean and undamaged condition: *"Left the premises with broken curtain rails, dirty microwave, dog hair in dryer and washing machine and carpets still smelling of dog odour necessitating further cleaning and repair costs (photos in evidence)"*. As the landlords' application did not clearly reference any specific claims made in relation to any damage or losses related to these issues, no findings have been made in relation to cleaning or damage after the tenancy had ended. The landlords may file a new application in relation to these claims within the time limits set under the Act.

I order that the landlords return the remainder of the tenant's security deposit plus applicable interest for a total monetary order of **\$1,014.43**.

As the tenant was successful in their claim, I allow the tenant to recover the \$100.00 filing fee.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of **\$1,114.33** in the tenant's favour for the return of their deposit, applicable interest, and recovery of their filing fee.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: May 21, 2024

Residential Tenancy Branch