



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND MNR MNSD MNDC FF

For the tenants: MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the security deposit and pet damage deposit, and to recover the filing fee.

The tenants applied for the return of all or part of their security deposit and pet damage deposit, and to recover their filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing, the parties confirmed that they received the evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the Act, other than a second package of evidence from the landlord, which was not submitted in accordance with the rules of procedure and was excluded from the hearing as a result.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord requested to withdraw his claim for damages and proceed with only his request for unpaid rent and for authorization to retain the tenants' security deposit and pet damage deposit under the *Act*. As a result, the landlord was permitted to withdraw the damages portion of his claim and is at **liberty to re-apply for damages under the *Act***. I note that by the landlord withdrawing his application for damages does not extend any applicable time limits under the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

The parties agree that a fixed term tenancy began on October 1, 2012 and was to revert to a month to month tenancy after September 30, 2013. Monthly rent in the amount of \$950.00 was due on the first day of each month. The tenants paid a security deposit of \$475.00 and a pet damage deposit of \$250.00 at the start of the tenancy in October of 2012, for a total of \$725.00 in combined deposits, which the landlord continues to hold.

Regarding the end of tenancy date, the parties agreed that the landlord suffered a stroke near the end of July of 2013 and due to that stroke, the landlord had to delay the meeting with the tenants for the return of the rental unit keys. The tenants stated that they vacated the rental unit on July 31, 2013, and the parties agreed that an appointment was made for August 1, 2013 for the return of the keys, which was delayed until August 3, 2013 at the request of the landlord due to the landlord's stroke.

The parties agreed that the tenants provided their written forwarding address to the landlord on August 3, 2013. The landlord applied for dispute resolution claiming towards the tenants' security deposit and pet damage deposit on August 27, 2013.

The landlord is seeking the loss of August 2013 rent in the amount of \$950.00 as the tenants vacated before the end of their fixed term tenancy. The tenants confirmed that they did not pay rent for the month of August 2013. The landlord is also seeking loss of September 2013 rent in the amount of \$525.00 as new renters moved into the rental

unit as of September 18, 2013 and the landlord was able to minimize his losses under the *Act* by having the new renters pay \$425.00 of partial rent for September 2013.

The tenants stated that they vacated the rental unit early due to “mould”, however, did not provide any photos to support the existence of mould or any other supporting documentary evidence of mould. The tenants did not refer to any documentary evidence during the hearing where they provided their concerns in writing to the landlord regarding alleged “mould” and that they gave the landlord a reasonable amount of time to address any concerns regarding alleged mould in the rental unit before they vacated the rental unit.

The tenants also alleged that new renters moved into the rental unit on August 17, 2013. The tenants confirmed that they did not have any supporting evidence to present during the hearing to support this aspect of their testimony.

During the hearing, both parties confirmed that there was no formal written incoming condition inspection report completed at the start of the tenancy.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

The landlord has claimed \$950.00 for loss of August 2013 due to the tenant’s vacating before the end of their fixed term tenancy. The landlord is also seeking loss of \$525.00 in rent for the month of September 2013. The landlord was able to minimize his loss for September 2013 as new tenants moved into the rental unit effective September 18, 2013 according to the landlord. Section 45 of the *Act* states:

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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Based on the above, **I find** the tenants breached section 45 of the *Act* as they failed to provide sufficient evidence that they gave proper written notice to the landlord to correct an alleged “mould” problem and did not have authority under the *Act* to end the fixed term tenancy earlier than September 30, 2013 as a result. Therefore, **I find** the landlord is entitled to compensation for the loss of August 2013 rent in the amount of **\$950.00**.

Section 7 of the *Act* requires that the landlord do whatever is reasonable to minimize the landlord’s damage or loss when claiming for damage or loss under the *Act*. **I find** that the landlord complied with section 7 of the *Act* by reducing his loss of rent for the month of September 2013 by \$425.00 by finding new renters who moved into the rental unit effective September 18, 2013. I find that the tenants provided insufficient evidence to support that new renters moved into the rental unit on August 17, 2013. Based on the above, **I find** the landlord suffered a loss of rent for a portion of the month of September 2013 in the amount of **\$525.00**.

The landlord continues to hold the tenants’ security deposit of \$475.00 and pet damage deposit of \$250.00 which has accrued \$0.00 in interest since the start of the tenancy. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenants' full security deposit and pet damage deposit within 15 days of date the landlord confirmed receiving the tenants' written forwarding address, August 3, 2013, which was later than the end of tenancy date. The landlord had until August 18, 2013 to either apply to retain the tenants' security deposit and pet damage deposit, or return the deposits in full, which the landlord failed to do. Therefore, **I grant** the tenants double their original security deposit of \$475.00 and double their original pet damage deposit of \$250.00 (the "deposits") as follows:

- Security deposit of \$475.00 doubles to \$950.00
- Pet damage deposit of \$250.00 doubles to \$500.00

Total of combined deposits after they are doubled under the Act: \$1,450.00

As the tenants' application had merit, **I grant** the tenants the recovery of their **\$50.00** filing fee.

As the landlord's application had merit, **I grant** the landlord the recovery of their **\$50.00** filing fee.

I find the tenants have established a total monetary claim in the amount of **\$1,500.00** comprised of \$1,450.00 in combined deposits which have been doubled, plus their \$50.00 filing fee.

I find the landlord has established a total monetary claim in the amount of **\$1,525.00** comprised of \$950.00 for loss of August 2013 rent, \$525.00 for the loss of a portion of September 2013 rent, and the \$50.00 filing fee.

Based on the above, **I find** that the landlord has established a monetary claim which is **\$25.00** greater than the tenants' monetary claim. As a result, I offset the two amounts owing, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$25.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord has established a monetary claim which is \$25.00 greater than the tenants' monetary claim. The two amounts owing have been offset. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$25.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord is at liberty to reapply for damages under the *Act*, as described earlier in this Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 10, 2013

Residential Tenancy Branch

