



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for money owed or compensation under the Act;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Landlord confirmed that they did not submit any evidence in support of their application to the Residential Tenancy Branch or to the tenants. The landlord confirmed receipt of all evidence submitted by the tenants and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed or compensation?

Is the landlord entitled to keep all or part of security and pet damage deposit?

Are the tenants entitled to the return of double the security and pet damage deposit?

Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2013, and was to expire on March 31, 2014. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid by the tenants.

Landlord's application

The landlord claims as follows:

a.	Loss of rent for March 2014	\$1,800.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,850.00

The landlord testified that the tenants breached the fixed term agreement when they gave notice to end the tenancy on January 10, 2014, with an effective vacancy date of February 28, 2014.

The landlord testified that they listed the rental unit on February 6, 2014, increasing the rent to \$2,000.00 and were unable to find new renter at the increased rent. The landlord stated that they then lowered the rent to \$1,800.00 and received no response. The landlord stated the rent was then further reduced to \$1,600.00 and they found a new renter for May 1, 2014.

The tenants testified that they ended the tenancy earlier due to a breach of their rights to quiet enjoyment. The tenants stated on January 1, 2014, new renters moved into the basement suite and the new renter was verbal threatening them and prevented from leaving the premises and the police were involved. The tenants stated the situation was very stressful and out of control and repeated request were made to the landlord to intervene and those requested had no effect and the landlord did nothing to resolve the matter.

The tenants testified that the rental unit was rented in March 2014 and not May 2014, because when they attended to the rental premises on March 5, 2014, the new renter was moving into the rental premises.

The landlord argued that he had determined that it was the tenants that were the instigators of any problems that they were experiencing with the new renter. The landlord denied that anyone moved into the rental unit in March 2014.

Tenants' application

The tenant claims as follows:

a.	Double the security deposit and pet damage deposit	\$1,600.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,650.00

The tenants testified that they provided the landlord on February 28, 2014 with their forwarding address.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, each party has the burden of proof to prove their respective claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Section 45 of the Residential Tenancy 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,

In this case, the evidence of the landlords was that the tenants breached the fixed term tenancy by providing notice to end the tenancy on January 10, 2014, with an effective vacancy date of February 28, 2014. The evidence of the tenants was that they ended the tenancy due to a breach of their rights to quiet enjoyment.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists.

To end a tenancy agreement for breach of a material term the party alleging the breach must inform the other party in writing that there is a problem, that they believe the problem is a breach of a material term of the tenancy agreement, that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable, and this if the problem is not fixed by the deadline, the party will end the tenancy.

The new renter moved into the lower rental premises on January 1, 2014 and the tenants ended the tenancy January 10, 2014, with an effective vacancy date of February 28, 2014. In this circumstance, the onus is on the tenants to prove they ended the tenancy on the basis of a breach of a material term, by providing the landlord in writing a letter as outlined above.

I find the tenants in the absent of any documentary evidence, such as a letter as described above, that the tenants have failed to provide sufficient evidence to support they ended the tenancy based on a breach of material term.

Therefore, I find the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was March 31, 2014, as stated in the tenancy agreement.

However, in all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In this case, both parties have provided a different version of when the rental premise was occupied by a new renter.

Even if I accept the evidence of the landlord that the premise was not occupied until May 1, 2014, I find the landlord's claim for compensation for loss of rent must be dismissed.

The evidence support that the landlord failed to take reasonable steps to minimize the loss as the rental unit was not immediately advertised for rent when they received notice to end the tenancy on January 10, 2014. Further, when the rental unit was advertised on February 6, 2014, approximately four weeks later, the landlord chose to significantly increase the rent.

As the landlord was not successful with their application, I find the landlord is not entitled to retain the tenants' security deposit (\$900.00) or the pet damage deposit of (\$900.00) and is not entitled to recover the cost of the filing fee from the tenants.

Tenants' application

Under section 38(1) of the Act, the landlord must within 15 days of the tenancy ending and the date the landlord receives the tenant's forwarding address in writing, must either repay the security deposit and pet damage deposit or make an application for dispute resolution claiming against the deposits. If the landlord fails to comply with section 38(1), under section 38(6) of the Act the tenant is entitled to the return of double the deposits.

In this case, the tenancy ended on February 28, 2014 and the landlord filed their application on March 11, 2014, which is within 15 days permitted under the Act. I find the tenants have failed to prove the landlord violated the Act. Therefore, I dismiss the

tenants' application for the return of double the security deposit and pet damage deposit.

As I have found the tenants have failed to prove a violation of the Act by the landlord and the security deposit and pet damage deposit were dealt with in the landlord's application. I find the tenants are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The landlord's application is dismissed.

The tenants' application for double the security and pet damage deposit is dismissed.

The landlord is ordered to return to the tenants the security deposit of \$900.00 and the pet damage deposit of \$900.00. Should the landlord fail to comply with my order, I grant the tenants a monetary order under section 67 for the amount of **\$1,800.00**.

This order may be filed in the Provincial Court (Small Claims) 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: June 25, 2014

Residential Tenancy Branch

