



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANDY DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of each other's materials submitted for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy? Is the tenant entitled to the return of his security deposit?
Is either the landlord or the tenant entitled to recover the filing fee for this application from the other party?

Background and Evidence

This one year fixed term rental agreement began in April 1, 2014 with a rental amount of \$650.00 payable on the first of each month. Both parties agree that the fixed term was scheduled to end on March 30, 2015 however the tenant vacated the rental unit on January 17, 2015. The landlord testified that she continued to hold the \$325.00 security deposit that the tenant paid on March 24, 2014. Both parties submitted a copy of the tenancy agreement as evidence in this hearing. It included an addendum that stated,

When terminating your lease, the termination notice must be given on or before the last day of a rental payment period to be effective on the last day of a subsequent rental payment period. For example, if rent is due on the first day of the month, the Tenant must give notice to the Landlord no later than September 30th to move out on October 31st.

The tenant testified that in the middle of January 2015, he received notification that he had been accepted into an academic program. He testified that, originally, he believed he would both work and go to school, maintaining his apartment. The tenant testified that he quickly realized that he would not be able to work and go to school. He testified that, on or about January 13, 2015, he notified the property manager by telephone that he was considering ending his lease. On January 17, 2015, the tenant vacated the rental unit. The landlord provided undisputed sworn testimony that the tenant did not provide any further notification that he intended to vacate the rental unit after his January 13 2015 telephone call. The tenant testified that he vacated the residence as soon as he realized he would not be able to continue to honour the rental agreement to allow the landlord time to re-rent the unit. He testified that he paid rent for the entire month of January 2015.

On January 20, 2015, the landlords filed to retain the tenant's security deposit and receive a monetary award for an additional amount in rental loss. The landlords sent by registered mail materials including a Notice of Hearing to the tenant on January 21, 2015. On February 4, 2015, the tenant filed for dispute resolution with the Residential Tenancy Branch seeking return of his security deposit and an amount equivalent to the security deposit in accordance with section (34) of the *Act*.

The tenant testified that there were other empty units within the rental premises. He testified that he never saw any online ads for the property. He submitted that the addendum relied on by the landlord does not trump section 38 of the *Act* with respect to a landlord's obligation to return a tenant's security deposit.

The landlord testified that online ads were placed to re-rent the unit as soon as the landlord became aware that the tenant had vacated the rental unit. He reiterated that the tenant had provided no formal notice.

Analysis

With respect to the tenant's claim for the return of his \$325.00 security deposit, the evidence is that the tenant ended the fixed term before its natural conclusion. There is

no dispute that the parties that the residential tenancy agreement in this matter was set for a one year fixed term scheduled to end March 30, 2015. There is no dispute between the parties that the tenancy ended when the tenant vacated on January 17, 2015 of his own accord.

Section 44 of the *Residential Tenancy Act* sets out how tenants can end a tenancy and Section 45 of the *Act* sets out the specific requirements of a tenant who is subject to a fixed term tenancy:

44 (1) A tenancy ends only if one or more of the following applies:

...(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

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

... (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.

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.

(emphasis added)

In this case, the tenant vacated the rental unit before the date specified as the end of the tenancy. The tenant did not provide notice to the landlord in advance of vacating the rental unit. The tenant did not retain an agreement from the landlord to end his tenancy early nor did he file with the Residential Tenancy Branch with respect to an early end to his tenancy. According to the tenant's testimony, he advised a representative of the landlord (property manager) on or about January 13, 2015 by telephone that he might

vacate the residence. By four days later, January 17, 2015, with no further notice to the landlord, the tenant vacated the residence. Therefore, I find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act* and in contravention of his fixed term tenancy agreement with the landlord.

With respect to the landlord's claim for retention of the security deposit in its entirety, the tenant disputed that there had been online advertising by the landlord. The tenant also submitted that there were other suites for rent in the residence at the time he vacated the rental unit and so the units were simply difficult to rent. Finally, the tenant submitted that the amount sought by the landlord was unsupported by her testimony. With respect to the tenant's objections, the amount sought by the landlord is not a number clearly divisible from the rental amount of \$650.00. The landlord sought less than one month's rent for the efforts required by the landlord to re-rent prior to the end of the tenant's fixed term. The undisputed evidence of the landlord is that the rental unit remained vacant until March 1, 2015 - one and a half months after the tenant vacated the rental unit and one month prior to the scheduled end of his fixed term.

I find that the landlord relied on the tenant's signing of the addendum to the rental agreement that states, in accordance with the *Act*, that the tenant is required to provide one full month's notice. I note that the tenant paid rent for the month of January 2015 despite residing in the rental unit for 17 out of 31 days in the month. However, this tenancy was scheduled to continue, as a fixed term only to be broken with the consent of both parties, until March 31, 2015. I find the landlord's requested amount is reasonable in the circumstances to compensate for some rental for the month of February 2015. Therefore, I find that the landlord is entitled to a total of \$500.00 as requested for rental loss as a result of the tenant's early end to this fixed term tenancy. I therefore allow the landlord to retain the tenant's security deposit in the amount of \$325.00 and to recover a further \$175.00 from the tenant.

As the landlord was successful in her application, I find the landlord is entitled to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I allow the landlord to retain the tenant's security deposit towards the total monetary award. I issue a monetary in order in favour of the landlord as follows;

Item	Amount
Loss to Landlord – - Early end to fixed term tenancy	\$500.00

Landlord to retain security deposit towards loss, monetary award	-325.00
Recover Filing fee	50.00
Total Monetary Order	\$225.00

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: August 4, 2015

Residential Tenancy Branch

