



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF; MNDC, MNSD, O, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, Regulation or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of their deposits, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords (male and female) did not attend this hearing, which lasted approximately 26 minutes. The two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The male tenant testified that the landlords were each served with a copy of the tenants' application for dispute resolution hearing package on March 22, 2017, both by way of registered mail. The tenants provided two Canada Post tracking numbers verbally during the hearing. As per the Canada Post website and the male tenant's testimony, one of the packages was returned to sender because it was unclaimed and the other package was delivered and signed for on March 24, 2017, by the female landlord. Refusal to collect mail or a failure to do so, does not avoid the deeming provisions of section 90 of the Act. In accordance with sections 89 and 90 of the Act, I find that both

landlords were deemed served with the tenants' application on March 27, 2017, five days after each of their registered mailings.

At the outset of the hearing, the tenants confirmed that they were not seeking the \$290.32 in rent from March 1 to 9, 2017 that they originally applied for. They said that this money was returned to them. The tenants did not provide any evidence regarding their claim for "other unspecified remedies." Accordingly, these portions of the tenants' application are dismissed without leave to reapply.

Preliminary Issue – Dismissal of Landlords' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the landlords, I order their entire application dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to the return of their deposits?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

The tenants testified regarding the following facts. This tenancy began on November 1, 2016 and ended on March 9, 2017. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$250.00 were paid by the tenants and the landlords continue to retain both deposits in full. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenancy agreement indicates that the tenancy was for a fixed term of six months ending on April 1, 2017 after which it would continue on a month-to-month basis or another fixed length of time. A move-in condition inspection report was completed for this tenancy. A move-out condition

inspection report was not fully completed for this tenancy, only the portion relating to the return of the keys was completed by the landlords. A written forwarding address was provided by the tenants to the landlords on March 1, 2107, by way of a letter that was posted to the landlords' door. The tenants provided a copy of the letter and a photograph of the male tenant posting the letter to the landlords' door. The landlords did not have written permission to keep any part of the tenants' deposits and their application was filed on March 29, 2017 to retain the deposits.

The tenants seek a return of their deposits totalling \$750.00 and \$100.00 for the application filing fee. They also seek a return of the \$1,000.00 rent that they paid to the landlords in February 2017 because the landlords ended their fixed term tenancy early. They said that they received a written letter, dated February 26, 2017, from the landlords, giving them ten days' notice to move out of the unit for various reasons that are usually included on a standard RTB 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). The letter was not on an approved RTB form. The tenants said they moved out by March 9, 2017 because the landlords forced them to, and someone at the RTB office told them that they could ask for their last month's rent back because the landlords ended the fixed term tenancy earlier than April 1, 2017.

Analysis

I dismiss the tenants' application for a reimbursement of \$1,000.00 for February 2017 rent. The tenants voluntarily chose to leave the rental unit based on a letter from the landlords. It was not a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on the standard approved RTB form. They did not dispute the letter or file an application at the RTB. Therefore, the tenants were not required to vacate the rental unit. Further, the tenants lived in the rental unit during the entire month of February 2017 and owe rent for that period of time, as per the written tenancy agreement and section 26 of the *Act*.

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlords continue to hold the tenants' deposits totalling \$750.00. No interest is payable on the deposits during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, I am required to consider the doubling provisions under section 38 of the *Act*, even if the tenants have not made an application to obtain double the return.

This tenancy ended on March 9, 2017. The tenants provided their written forwarding address to the landlords on March 1, 2017, by way of a letter that was posted to the landlords' door. The landlords did not have written permission to keep any part of the tenants' deposits. The landlords' application to retain the deposits was filed on March 29, 2017, more than 15 days after March 9, 2017. Therefore, as per section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I am required to double the amount of the tenants' deposits. Accordingly, I find that the tenants are entitled to double the value of \$750.00, totalling \$1,500.00.

As the tenants were partially successful in their application, I find that they are entitled to recover the \$100.00 application filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,600.00. The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the tenants' application is dismissed without leave to reapply.

The landlords' entire application is dismissed 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: August 24, 2017

Residential Tenancy Branch