



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC OLC FF

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 damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; 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, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

Preliminary Issue - Adjournment of Hearing

At the beginning of the hearing, the landlords requested an adjournment of the hearing as the landlord was out of the country for a wedding.

The tenants were opposed to the adjournment as they were ready to proceed.

During the hearing, I advised both parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In reaching my decision, I note that the reason provided by the landlords for the adjournment would be prejudicial to the other party as the other party was ready to proceed. The landlord was able to attend the hearing, and on this basis the landlords' application to adjourn was not granted.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to an order requiring the landlords to comply with the Act, regulation or tenancy agreement?

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

Background and Evidence

This fixed term tenancy began on July 1, 2016 with monthly rent set at \$1,450.00. The landlords collected a security deposit in the amount of \$725.00, which they still hold. The tenants do not dispute the fact that this was a fixed term tenancy which was to end on June 30, 2017. The tenants moved out on February 28, 2017 prior to the end of this tenancy.

The landlords mitigated their losses, and were able to find a new tenant to fill the vacancy. The suite was re-rented for March 1, 2017 for \$1,500.00 per month, but the new tenant was not able to move in until March 5, 2017, which according to the landlords' testimony, was because the tenants did not leave the rental unit in clean, undamaged condition. The tenants disputed this, testifying that the new tenants were from another province.

The landlords submitted a monetary claim for \$450.00 in order to recover their losses associated with the tenancy as listed below:

Item	Amount
Liquidated Damages as set out in the Tenancy Agreement	\$725.00
Carpet Cleaning	110.00
Cleaning	40.00
Painting	200.00
Filing Fee	100.00
Security Deposit	-725.00
Total Monetary Order Requested	\$450.00

The landlords testified that the tenants were aware that the tenancy agreement indicates liquidated damage term on the written tenancy agreement which states that *"if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement at an end and in such event the sum of \$725.00 shall be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord"*.

The tenants gave written notice by way of a written letter dated January 28, 2017 that they were moving on March 1, 2017, and the landlords responded by way of email, informing the tenants that \$725.00 would be applied as liquidated damages as per the tenancy agreement.

A copy of the tenancy agreement, and the above correspondence were included in the landlords' evidence. The landlords also testified that the tenants were given a welcome package upon move-in, informing them of their responsibilities, as well as cleaning instructions. A copy of the welcome package and instructions were included in the landlord's evidence. The landlords testified that this was the standards practice for all tenancies, and that this was communicated clearly to all tenants.

The landlords performed both a move-in and move-out inspection, and included a copy of the Condition Inspection Report, colour photos, as well as invoices in their evidence to support the above claims. The landlords testified that the carpets were brand new at the beginning of the tenancy, which were not cleaned by the tenants, and the walls were damaged with 67 holes as depicted and described in the inspection report and photos. The landlords testified that the walls were last painted in June of 2016, right before this tenancy had begun.

The tenants requested the return of their security deposit in full, stating that they were not aware that they were responsible for the liquidated damages for ending the fixed-term tenancy early. The tenants testified that their copy of the written tenancy agreement did not contain the amount for liquidated damages. The landlords acknowledged that there were two versions of the tenancy agreement and that the amount was originally left blank, but that they had called the tenants later to sign an amended agreement. The landlords testified that the tenants were provided with the amended agreement. The tenants testified later in the hearing that they could not recall what they had signed, and acknowledged that they found a copy of the amended agreement in their email.

The tenants dispute the landlords' monetary claim stating that the landlords were able to mitigate their costs by finding a new tenant for higher rent. The tenants also testified that at the move-out inspection, they were told that the unit was reasonably clean, stating that they did their best to clean the carpet. The landlords responded that the tenants were given an opportunity to settle the matter upon move-out by allowing the landlords to retain the security deposit, but the tenants did not accept the offer.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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:...

(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;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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.

It was undisputed by both parties that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out four months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlords is that they were able to re-rent the suite, and the landlords are only claiming \$725.00 for liquidated damages as

specified in the tenancy agreement, in addition to the costs of cleaning and painting the rental suite.

I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for March 2017, as is required by section 7(2) of the *Act*. I am also satisfied that the landlords had communicated to the tenants on more than one occasion that the landlords would be seeking \$725.00 in liquidated damages for the early end of this tenancy. I accept the landlords' testimony that this was communicated on both the written tenancy agreement, as well as the email response to the tenants.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlords provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlords supported their claims with receipts and invoice, as well as photos. Accordingly, I find the landlords are entitled to compensation for these losses. I issue a monetary award of \$110.00 for the carpet cleaning, \$40.00 for the suite cleaning and \$200.00 for the painting.

The landlords are granted a monetary claim of \$350.00 for the tenants' failure to comply with section 37(2)(a) of the *Act*.

I find that the landlords' Application has merit and that the landlords are entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security deposit plus applicable interest in satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

The tenants' application for the return of their security deposit and for recovery of the filing fee is dismissed. As I find that landlords had complied with the *Act*, regulation, and tenancy agreement, this portion of the tenants' application is also dismissed.

Conclusion

I issue a Monetary Order in the amount of \$450.00 in the landlords' favour under the following terms which allows the landlords to retain the security deposit in satisfaction of

the monetary claim for damages and losses, plus recover the \$100.00 filing fee for this application.

Item	Amount
Liquidated Damages as set out in the Tenancy Agreement	\$725.00
Carpet Cleaning	110.00
Cleaning	40.00
Painting	200.00
Filing Fee	100.00
Security Deposit	-725.00
Total Monetary Order	\$450.00

Should the tenants 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 tenants' entire application is dismissed.

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: September 13, 2017

Residential Tenancy Branch