



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEADLAND PROPERTIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF, MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with applications by both the corporate landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The corporate landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant named the personal landlord in her application and sought:

- a Monetary Order pursuant to section 67;
- recovery of all or a portion of the security deposit pursuant to section 38;
- an order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- recovery of the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, present sworn testimony and make submissions. The corporate landlord was represented by its agent CG (the “landlord”) who is named as the respondent in the tenant’s application.

As both parties were in attendance I confirmed that there were no issues with service of either party’s application for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective applications and evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a return of the security deposit?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?
Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

This fixed term tenancy began in February, 2017 and was scheduled to end February, 2018. The tenant vacated the rental unit on April 2, 2017. The monthly rent was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The parties confirmed that no condition inspection report was prepared at either the start or end of the tenancy.

The tenant testified that she informed the landlord she would be vacating the rental unit by a voicemail message left on March 31, 2017. The tenant said that she believes she provided the landlord with a forwarding address on or about April 14, 2017. The tenant testified that she paid to the landlord a total of \$4,400.00 for rent throughout the tenancy. The tenant testified that she was required to pay several months' rent at the outset of the tenancy and because of the cost she was unable to move in to occupy the rental unit during the month of February, 2017.

The landlord confirmed that the tenant paid rent in the amount of \$2,200.00 for each of the months of February, 2017 and March, 2017. The landlord confirmed that the tenant first notified him of her intention to end the fixed term tenancy on March 31, 2017. The landlord said that upon receiving notice of the tenant's intention he advertised the rental unit and found a new tenant who took moved in on May 1, 2017. The landlord gave evidence that he was charged \$192.50 by the property management company for the cost of managing the tenancy and re-renting the unit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

Additionally, the parties gave evidence that no condition inspection report was prepared at either the start or end of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

I accept the evidence of the tenant that the landlord did not return the security deposit, did not make an application for authorization to retain the security deposit nor did they have written authorization from the tenant that they may retain any portion of the security deposit.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit within the 15 day time limit and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$2,200.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant claims the amount of \$2,200.00 arguing that because she did not occupy the rental unit in February, 2017 she is entitled to a reimbursement. I find there is insufficient evidence to show that the tenant suffered a loss as a result of the landlord's breach of the Act, regulations or tenancy agreement. The tenancy agreement signed by the parties provides that the tenancy begins on February 1, 2017. The tenant's obligation to pay the monthly rent began on that date and whether the tenant physically moved in or not is irrelevant to the tenant's duty to pay rent. Furthermore, the tenant testified that she did not make a lump sum payment of \$7,700.00 for the security deposit and rent for two months but paid the amount requested over a period of time. I find there is insufficient evidence to show that the landlord has violated the Act, regulations or tenancy agreement and as a direct result the tenant suffered losses. Consequently, I dismiss this portion of the tenant's claim.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

Section 45 (2) of the *Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice effective on a date that is not earlier than the date specified in the tenancy agreement and is the day before the day in the month that rent is payable in the tenancy agreement. In this case, the parties gave evidence that the tenant gave notice on March 31, 2017 and moved out on April 2, 2017.

While the tenant testified that there was an agreement with the landlord that the tenant was not obligated to pay the rent for April, 2017, the landlord disputes that there was such an agreement. I find on a balance of probabilities that the tenant has failed to show that there was an agreement in place absolving the tenant of her duty to pay the monthly rent. I find that the tenant was obligated to pay the \$2,200.00 rent on April 1, 2017 in accordance with the tenancy agreement.

I accept the landlord's undisputed evidence that the rental unit was advertised and a new tenant was found for May 1, 2017. I further accept the undisputed evidence of the landlord that he incurred costs of \$192.50 from the property management company for re-renting the rental unit after the tenant vacated. I find that the tenant violated the tenancy agreement and the landlord took reasonable steps to mitigate future loss. I find that despite the landlord's efforts the landlord suffered losses as a result of the tenant's breach of the agreement in the amount of \$2,417.50.

As I find the landlord was more successful in his application, the landlord may recover the \$100.00 filing fee for this application from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,100.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$292.50 under the following terms:

Item	Amount
Tenant Award Double Security Deposit (\$1,100 x 2)	\$2,200.00
Less April, 2017 Rent Owing	-\$2,200.00
Less Damages for Re-Renting	-\$192.50
Less Filing Fees	-\$100.00
TOTAL	-\$292.50

The tenant must be served with this Order as soon as possible. Should the tenant 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.

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 14, 2017

Residential Tenancy Branch