



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNSD CNC MNDC OLC

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”):

The landlord sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*;
- an Order allowing them the landlord to retain the tenants’ security deposit; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants sought:

- a return of their security deposit pursuant to section 38 of the *Act*;
- a monetary order for loss or other money owed pursuant to section 67 of the *Act*;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*;
- an order pursuant to section 62 of the *Act* directing the landlord to comply with the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants and landlord attended the hearing and were given a full opportunity to be heard, to present their testimony and to make submissions. The landlord was represented at the hearing by agent L.B. (the “landlord”), while the tenants were represented at the hearing by tenant, D.H. (the “tenant”).

Both parties acknowledged receipt of each other’s applications for dispute resolution by way of Canada Post Registered Mail. I find that both parties were duly served with each other’s application for dispute and evidentiary package under section 88 & 89 of the *Act*.

Following opening remarks, the tenants confirmed that they were not seeking to cancel a 1 Month Notice to End Tenancy for Cause. They stated that this section of their application had been marked in error.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Is either party entitled to a return of the security deposit?

Should the landlord be directed to comply with the *Act*?

Is either party entitled to a return of the filing fee?

Background and Evidence

Testimony provided to the hearing by both parties stated that this tenancy began on November 1, 2016 and ended on May 31, 2017. Rent was \$2,030.00 per month and a security deposit of \$947.50 collected at the outset of the tenancy continues to be held by the landlord. This was a fixed-term tenancy which was set to expire on October 31, 2017.

The landlord explained that she was seeking a monetary award of \$2,180.00 in satisfaction for unpaid rent for the month of June 2017. When asked to clarify the figure sought in her application, the landlord explained that base rent was \$1,895.00; however, with storage, other fees, and an application for a return of the filing fee, her application came to \$2,180.00. The tenants did not dispute this figure.

The tenants said they were seeking a monetary award of \$3,942.50 due to the hardships and stress they experienced under this tenancy. This figure included an amount of \$465.00 for a storage locker they used for three months following their departure from the rental unit, along with a return of one-month's rent of \$2,030.00, a return of their security deposit and a claim for damages of \$500.00.

At the hearing, the landlord argued that she was entitled to a monetary award because the tenants did not provide proper notice to vacate their rental unit. She said that the terms of their tenancy agreement provide that a tenant is to give the landlord 30 days written notice prior to ending their tenancy. The tenants acknowledged that they moved out on, or around May 31, 2017 and provided the landlord with notice of their departure

on the same day. They explained that they felt forced out of the rental unit, and only departed after harassment from the landlord.

The landlord stated that the rental unit was re-rented on June 15, 2017. Prior to this, the landlord had contacted persons on the building's waiting list and advertised the unit on Craigslist. Additionally, the landlord said some minor maintenance was done to the suite.

The tenants' application for a monetary award centered on their experiences in the rental unit and the pressure to move out, they explained they felt from the landlord. The tenants' said that on February 17, 2017 they were sent a letter warning them of eviction due to repeated infractions related to excessive noise and because of complaints that their dog had bitten another resident on two occasions. The tenants denied having any knowledge of the allegations detailed in the letter and said that they felt very unsettled after receiving such a stark warning. The landlord acknowledged that complaints had been received but that they had not been passed on to the tenants because of the complainants' request for anonymity.

During the hearing the tenants explained that their monetary application reflected the uncomfortable living situation they say was created by the landlord. They said that they felt they could be evicted at any moment and were forced to find alternative accommodation due to the landlords' harassment.

Analysis – Landlord's Application

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."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In this case, notice was provided to the landlord on May 31, 2017. The landlord testified that upon receipt of this notice she immediately took steps to prepare the rental unit for

future renters. She said she contacted people from the waiting list and posted an ad on Craigslist. On June 15, 2017 a new tenant was in occupation of the rental unit.

Accordingly, I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*. The landlord is therefore entitled an amount equivalent to half of a month's rent, or \$1,015.

The landlord has also applied for an Order allowing her to retain the tenants' security deposit. Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to 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 a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

Both parties acknowledged at the hearing that this tenancy ended on May 31, 2017. On June 9, 2017 that the landlord applied for dispute resolution to retain the tenants' security deposit. The landlord has therefore met the requirements of section 38 of the *Act*.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in its entirety in partial satisfaction for the monetary award granted.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenants.

The landlord will be granted a monetary award of \$67.50, plus a return of the filing fee.

Analysis – Tenants' Application

The tenants have applied for a monetary award of \$3,942.50 in relation to the hardship they said they experienced under the tenancy, as well as the expenses they incurred through a storage locker following the end of tenancy and because of missed employment.

As I have already granted the landlord an Order to retain the tenants' security deposit, I will solely focus on their application for a monetary award related to the expenses they incurred, lost wages and due to losses suffered under the tenancy

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

As described above, Section 67 of the *Residential Tenancy Act* only allows me to grant a monetary order when one party has proved the existence of damage and loss, stemming *directly* from a violation of the tenancy agreement or in contravention to the *Act*. I do not find, based on the testimony and evidence presented at the hearing, that the landlord has violated the tenancy agreement of the *Act*. While the tenants received a letter from the landlord warning them of their behaviour, no notices to end tenancy were ever issued by the landlord nor did the tenants face any immediate threat of eviction. I find that the letter which the tenants received from the landlord to be a stern warning informing them of complaints that were received. In fact, the letter contained an offer from the landlord to waive the liquidated damages fee of \$400.00 “should the tenants determine a different accommodation may be more suitable.” Testimony was presented at the hearing that after receiving this letter from the landlord, that the tenants took steps to clarify the landlord’s concerns. No evidence was presented at the hearing that following these discussions the tenants were treated unfairly or that the landlord made a concerted effort to disturb the tenants in any manner.

I find that the tenants chose to vacate the premises on their own volition following the issuance of a single warning letter. Little evidence was presented that the landlord actively harassed them to vacate the rental unit, nor was any evidence presented that a notice to end tenancy was ever issued. For these reasons, the tenants’ application for a monetary award is dismissed.

As the tenants were unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

I issue a Monetary Order in the landlord’s favour in the amount of \$167.50 against the tenants based on the following monetary awards:

ITEM	AMOUNT
Unpaid Partial rent for June 2017	\$1,015.00
Return of Filing Fee	100.00
Less Security Deposit	(-\$947.50)
TOTAL =	\$167.50

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. 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.

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: November 23, 2017

Residential Tenancy Branch