



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to recover double the amount of the security deposit pursuant to section 38 of the *Act*;
- an Order that the landlord comply with the Act, regulations and tenancy agreement pursuant to section 62; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The tenant's spouse attended and assisted the tenant.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord said that he had not submitted any evidence of his own. I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to double the value of the security deposit?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The

principal aspects of the tenant's claims and my findings around each are set out below.

The parties agreed on the following facts. This fixed-term tenancy began in March, 2015 and ended on September 10, 2015. Pursuant to the written tenancy agreement submitted into written evidence, the tenancy was scheduled to end February 28, 2016. The monthly rent was \$3,500.00 payable on the first of each month. A security deposit of \$1,750.00 was paid by the tenant at the start of the tenancy and is still held by the landlord.

A condition inspection report was prepared by the parties both at the start of the tenancy and at move-out. The tenant provided their forwarding address in writing on September 11, 2015. Copies of the condition inspection report were submitted into evidence.

The tenant testified that they gave written notice to the landlord on August 31, 2015 of their intention to end the tenancy by September 10, 2015. The tenant said that the rental unit saw an infestation of snakes and spiders causing the suite to be uninhabitable. A copy of the letter of August 31, 2015 was submitted into evidence. In the letter the tenant writes:

Thanks for agreeing with us to end tenancy & move out of this house, during our face to face meeting on Aug., 26th, 15, ...

...

Since we have paid \$3500 for the month of Sep., You will be holding:

- A) Equivalent of \$2333 of our money for Sep 10th to Sep. 30
- B) Our damage deposit of \$1750.
- C) We'll be responsible for 2/3 of Hydro up to Sep 10th only

The landlord submits that the letter provides written authorization to retain the security deposit and the rent for September, 2015. The landlord interprets the future progressive tense of the verb as meaning that he would be holding the deposit continuously, effectively permitting the landlord to retain the deposit. The landlord said that this was negotiated and agreed to by the parties. The landlord said that they agreed to the early end of the fixed term tenancy because of the ability to retain the security deposit. The landlord said that after receiving the notice from the tenant they advertised the rental unit and were able to find a new occupant for November 1, 2015.

The tenant disputes the landlord's interpretation and states that he never provided authorization to the landlord that he may retain any portion of the security deposit. The tenant testified that he has requested the deposit be returned shortly after the tenancy ended and numerous times thereafter. The tenant also submits that the move-out inspection report includes a hand written note by the signatures stating "\$0 deductions for damage".

The tenant seeks a monetary award in the amount of \$6,945.99 for the following items:

Item	Amount
Double Security Deposit (2 x \$1,750.00)	\$3,500.00
Recovery of Rent for September 2015 on per diem basis (Sept 11 – Sept 30)	\$2,333.00
Moving Charges	\$1,001.44
Canada Post Mailing	\$11.55
Filing Fee	\$100.00
Total =	\$6,945.99

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).

The parties disagree on the interpretation of the tenant's notice letter providing of August 31, 2015. The landlord testified that the letter confirmed an earlier discussion with the tenant where the parties agreed that the landlord may retain the security deposit and balance of September, 2015 rent. On a balance of probabilities I find the landlord's interpretation to be more reasonable and consistent with the surrounding evidence and circumstances.

Taken at its face the phrase "you will be holding" would seem to imply an itemization of what the tenant is permitting the landlord to retain. If this was a list of items being held by the landlord which the tenant was requesting be returned it would be reasonable to expect the letter would contain some instruction on how the funds should be paid. Additionally, the tenant's inclusion of an item stating they will pay their share of the utility up to the end of the tenancy leads me to conclude that this is a list of what the landlord is entitled to recover.

While the tenant testified that they have requested a return of the security deposit from the landlord on multiple occasions they did not submit any documentary evidence of such requests. In the hearing, the tenant referred to a text message sent to the landlord but a copy was not submitted into evidence. If the return of the security deposit and balance of the rent was a live issue it would be reasonable to expect that there would be multiple correspondence between the parties: demand letters or records of the tenant disputing the landlord's right to retain the deposits. There is no documentary evidence showing that the security deposit was pursued by the tenant prior to filing the present application, nearly 2 years after the end of the tenancy.

I do not find the hand-written note on the move-out condition inspection report stating there will be no deductions for damages to be inconsistent with my finding that the parties entered into an agreement where the security deposit was surrendered to allow an early end of the fixed term tenancy.

Based on the foregoing I find that the letter of August 31, 2015 to be written authorization provided by the tenant to the landlord that the landlord may retain the security deposit of \$1,750.00. As such I find that the tenant is not entitled to now demand a return of the deposit and dismiss this portion of the application.

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.

As I find that the letter of August 31, 2015 allows the landlord to retain the full rent paid by the tenant for September, 2015 I find it is unnecessary to make a finding regarding this item.

I will note that, a tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may not end a fixed term tenancy on a date earlier than that provided in the tenancy agreement. Therefore, the tenant was obligated to pay the full amount of the monthly rent for September, 2015 and is not entitled to a refund of the rent for those days they did not occupy the rental unit.

I find that the tenant has not submitted sufficient evidence in support of their application for a monetary award for the moving charges. The onus is on the applicant to show that there has been a loss arising from a violation of the *Act*, regulations or tenancy agreement. The tenant has failed to show on a balance that there has been a loss. The tenant has not submitted any receipts, invoices or bank statements showing that they have incurred a financial loss. Nor has the tenant has shown that any loss was suffered as a result of the landlord's actions. Consequently, I dismiss this portion of the tenant's application.

As the tenant's application was unsuccessful they are not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed in its entirety 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: March 22, 2018

Residential Tenancy Branch