



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application and amended application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on March 1, 2017 on a fixed term to end February 28, 2018 at which time the Tenants were required to move out of the unit. Rent of \$1,850.00 was payable on the 31st day of each month for the following month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit. On January 26, 2018 the Landlord served the Tenants with a one month notice to end tenancy for cause with an effective move-out date of February 28, 2018. The reason for the notice was that the Tenants had breached a material term of the tenancy agreement by having a pet without the Landlord’s consent. The Tenants disputed that

notice to end tenancy and a hearing was scheduled. On February 17, 2018 the Tenants informed the Landlord that they would move out of the unit on February 28, 2018 and did move out on that date. The hearing on the dispute of the notice to end tenancy was cancelled either March 7 or 9, 2018.

The Landlord states that upon discovering that the Tenants had breached the tenancy agreement the Landlord started to advertise for another tenancy. The Landlord advertised the unit at a rental rate of \$2,050.00. The Landlord states that prior to the breach the Landlord had been in discussions with the Tenants to continue the tenancy after the fixed term but that no agreement was reached. The Landlord states that the Tenants had disputed the notice to end tenancy and in their application made submission that they were seeking to extend the move-out date to March 31, 2018. The Landlord states that as the hearing was scheduled for March 15, 2018 and as the Landlord required two weeks use of the unit after the end of the tenancy for renovation purposes, the Landlord chose a new tenant that could start a tenancy as of March 30, 2018. The Landlord claims a loss of \$1,024.95 for the period March 15 to 29, 2018 as the new tenants could have occupied the unit earlier than March 30, 2018. The Landlord also states that no tenant could be found for a March 15, 2018 start date.

Legal Counsel for the Tenants argues that as the Landlord was aware by February 17, 2018 that the Tenants were moving out at the end of February 2018 the Landlord had sufficient time to find a new tenant for March 15, 2018, allowing the time for renovations. Legal Counsel argues that the Tenants complied with both the tenancy agreement requirement to move out on February 28, 2018 and the Landlord's notice to end tenancy for February 28, 2018. Legal Counsel further argues that the RTB policy indicates that the return of double the security deposit may be ordered if the Landlord withholds it for wrong purposes. Legal Counsel argues that the Landlord should have returned the security deposit to the Tenants pending the outcome of her claims and that it was not reasonable for the Landlord to withhold the return of the security deposit as the Tenants complied with the tenancy agreement and the Act, including the requirements for move-

out. The Landlord argues that in error her application for compensation did not include a request to retain the security deposit against any entitlement and that the amendment to the application was completed to correct that error.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Although the Landlord appears to argue that by disputing the notice to end the tenancy the Tenants caused the Landlord to lose rental income, as the Tenants have a right under the Act to dispute the notice I find that the Landlord has not substantiated that by disputing the notice the Tenants breached any part of the Act or tenancy agreement. As there is no evidence that the Tenants did not comply with the Landlord's move out date of February 28, 2018 as set out the Landlord's notice to end the tenancy or did not comply with the tenancy agreement requirement to move out of the unit on February 28, 2018 and as there is no other evidence of any breach of the Act or tenancy agreement by the Tenants I find that the Landlord has not substantiated a loss as a result of such a breach by the Tenants. As a result I dismiss the Landlord's claim for loss of rental income. As the Landlord's claim has had no success I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 sets out that double the security deposit will be ordered whether or not the landlord may have a valid monetary claim:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act¹⁶;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process; or
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act.

Based on the undisputed evidence of the date of the end of the tenancy and the provision of the forwarding address I find that the Landlord applied to claim against the security deposit within the time required. There is no evidence of anything that may extinguish the Landlord's right to make such a claim such as the lack of conducting inspection reports. While the Landlord has not been successful with its claim for lost rental income there has been no argument or evidence to support a finding that the Landlord's application was either frivolous or an abuse of process and on its face I do not consider the Landlord's application as such. While it may not have been reasonable for the Landlord to withhold the return of the security deposit I do not consider this as a basis to find the application frivolous. As a result I do not find that the Landlord must return double the security deposit.

I order the Landlord to return the security deposit plus zero interest of **\$925.00** to the Tenants forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$925.00**. If necessary, this order may be filed in the Small Claims 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: May 11, 2018

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **May 28, 2018**
AT THE PLACES INDICATED **IN BOLD**.

Residential Tenancy Branch