



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNDLS MNRLS
Tenants' application: MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution ("applications") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order of \$2,150.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for unpaid rent or utilities, and to retain the tenants' security deposit. The tenants applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Specifically, the tenants are seeking \$4,060.00 in compensation in the amount of two month's rent due to the landlord allegedly failing to comply with the reason provided in a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), for the return of their security deposit, and to recover the cost of the filing fee.

The parties confirmed that they received and had the opportunity to review the application and documentary evidence from the other party. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Neither party raised any concerns regarding the service of documentary evidence; as a result, I find the parties to have been sufficiently served in accordance with the Act.

The landlords and the tenants attended the hearing and were affirmed. The hearing process was explained to the parties and the parties were provided the opportunity to ask questions.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. A copy of the decision will be emailed to the parties at the email addresses provided in their respective applications. Before me are one landlord application and two tenant applications. The parties confirmed having been served with all three applications before me and as a result, I will deal with all three applications in this decision.

Regarding the landlord's documentary evidence, the landlord raised the issue during the hearing that not all of the material served on the RTB was there for my consideration. The landlord was advised that it was up to the landlord to confirm prior to the hearing and in accordance with the Rules of Procedure that all evidence to support the application was served and received. In the matter before me, the landlord neglected to confirm that the evidence was uploaded into the service portal which I find could have addressed through reasonable due diligence on the part of the landlord that the landlord did not do. Therefore, the hearing continued without consideration of evidence that was missing or otherwise not available for my consideration from the landlord's evidence submission.

Issues to be Decided

- Is either party entitled to any monetary compensation under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is either party entitled to the return of their security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one month fixed term tenancy began on December 1, 2015 and reverted to a month to month tenancy after the first month. Monthly rent was originally \$1,600.00 and was increased during the tenancy to \$1,655.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$800.00 which the landlord continues to hold.

Landlord's claim

The landlord has claimed \$2,150.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Cleaning costs	\$125.00
2. Cabinets damage, pots, pans and rug	\$375.00
3. Rent for October 2017 (loss of rent)	\$1,650.00
TOTAL	\$2,150.00

Regarding item 1, the landlord has claimed \$125.00 for cleaning costs and confirmed that the condition inspection report was not submitted in evidence. The tenants stated that the one photo they had from the landlord was so dark they could not see what was in the photo and the landlord was advised that I did not have a photo served to consider. The tenants claimed that they did clean the rental unit and as a result, the landlord was advised that this item was dismissed due to insufficient evidence during the hearing which will be addressed further below.

Regarding item 2, the landlord has claimed \$375.00 for damages to the cabinets, pots, pans and rugs. The landlord referred to page "15c" submitted in evidence which the landlord was advised that I did not have in the evidence served on the Residential Tenancy Branch ("RTB"). In addition, the tenants confirmed that they also did not have a page titled "15c" served on the tenants. As a result, due to no photographic evidence or condition inspection report for my consideration and that fact that the tenants did not agree with this portion of the landlord's claim, this portion of the landlord's claim was dismissed during the hearing due to insufficient evidence which I will address further below.

Regarding item 3, the landlord has claimed \$1,650.00 for unpaid October 2017 rent. The landlord stated that the tenants vacated the rental unit without written notice and without having been served a 2 Month Notice as claimed by the tenants. The tenants confirmed that they were not served with a 2 Month Notice in writing. The landlord denies that she advised the tenants that they had to vacate the rental unit and that the conversation the landlord had with the tenants was about possible future renovations but that there were no specific dates or scope discussed and that a 2 Month Notice was not served on the tenants. The tenants agreed that the landlord did not issue a written 2 Month Notice upon them and that the tenants made the decision to vacate the rental unit and returned the keys on October 1, 2017 without paying October 2017 rent. I note that the parties agreed that monthly rent was actually \$1,655.00 and not \$1,650.00 by the end of the tenancy which I will account for later in my decision.

Tenants' claim

The tenants have claimed double the monthly rent of \$1,655.00 due to the landlord not complying with the reason stated on a 2 Month Notice which was dismissed during the hearing as the parties agreed that a 2 Month Notice was not actually served on the tenants. While I will address this further below, the remainder of the tenants claim relates to a claim for \$1,000.00 in compensation due to loss of quiet enjoyment of the rental unit.

The tenants claim in their application in part that they are seeking compensation from the landlord due to a breach of section 28 of the *Act* by the landlord relating to noise coming from another rental unit yet during the hearing the tenants admitted that they did not submit previous texts for my consideration in evidence to support that the tenants had complained about noise to the landlord. The tenants stated that a September 5, 2017 text was the only text submitted in evidence for my consideration. As a result of the above, this portion of the tenants' application was also dismissed during the hearing as I find that the tenants vacated shortly after the September 5, 2017 text and that the tenants failed to meet the burden of proof which I will address further below.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what was reasonable to minimize the damage or losses that were incurred.

Landlord's claim

Item 1 – The landlord has claimed \$125.00 for cleaning costs. There was no condition inspection report or photographic evidence submitted for my consideration and as a result, I find the landlord has failed to meet the burden of proof in proving parts one through four of the test for damages or loss. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 2 - The landlord has claimed \$375.00 for damages to the cabinets, pots, pans and rugs. While the landlord referred to page "15c" submitted in evidence I note that page "15c" was not before me for my consideration and according to the tenants, they too did not have that page for their consideration. As a result, and due to a lack of photographic evidence and condition inspection report for my consideration combined with the fact that the tenants did not agree with this portion of the landlord's claim, this portion of the landlord's claim was dismissed during the hearing due to insufficient evidence without leave to reapply. I find the landlords failed to meet all four parts of the test for damages or loss under the *Act*.

Item 3 - The landlord has claimed \$1,650.00 for unpaid October 2017 rent. I accept the landlord's testimony that the tenants were not served with the 2 Month Notice as the tenants confirmed during the hearing that they did not receive a 2 Month Notice in writing. Therefore, I find the tenants breached section 45(1) of the *Act* which states in part:

Tenant's notice

45 (1) A tenant may end a periodic 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, and**

(b) **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.**

[Reproduced as written with my emphasis added]

Based on the above, I find the tenants failed to serve their written one month notice on the landlord in writing and as a result; the tenants owe October 2017 rent in the amount of **\$1,655.00**. I find the landlord has met the burden of proof as a result. I have used the amount of \$1,655.00 as that was the agreed upon rent at the end of the tenancy.

As the landlord's claim was partially successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under section 72 of the *Act*.

Tenants' claim

2 Month Compensation - Firstly I have considered section 51 of the *Act* which states:

(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis added]

Secondly, I have considered that the parties confirmed that a 2 Month Notice was not served on the tenants by the landlord and that a 2 Month Notice does not exist between the parties as a result. Therefore, I find that the tenants have provided insufficient evidence to support all four parts of the test for damages or loss under the *Act* as I find there was not 2 Month Notice served on the tenants by the landlord. Given the above, the tenants' application for two months' rent in compensation under section 52 of the *Act* is **dismissed without leave to reapply** due to insufficient evidence.

Loss of quiet enjoyment – Section 28 of the *Act* states in part:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the tenants' evidence and find that they have failed to provide sufficient evidence to prove all four parts of the test for damage or loss under the *Act*. I find that the first text submitted dated September 5, 2017 when the tenants ended the tenancy and vacated within a short time period after September 5, 2017 does not provide enough time for the landlord to reasonably respond to any noise complaints and that as such, the tenants are not entitled to any compensation as claimed under the *Act*. In other words, I find there is insufficient evidence from the tenants to support that the landlords breached the *Act* as claimed by the tenants.

Given the above, I find the tenants' application has no merit and is dismissed without leave to reapply, due to insufficient evidence. I do not grant the tenants the recovery of the cost of the filing fee as a result.

The landlord has established a total monetary claim of \$1,755.00 comprised of \$1,655.00 for item 3, plus \$100.00 for the recovery of the cost of the filing fee. I authorize the landlord to retain the tenants' \$800.00 security deposit in full that has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. I grant

the landlord a monetary order in the amount of **\$955.00** for the amount owing by the tenants to the landlord pursuant to sections 67 and 72 of the *Act*.

Conclusion

The tenants' claim fails and is dismissed without leave to reapply due to insufficient evidence.

The landlord's claim is partially successful. The landlord has established a total monetary claim of \$1,755.00 comprised of \$1,655.00 for item 3, plus \$100.00 for the recovery of the cost of the filing fee. I authorize the landlord to retain the tenants' \$800.00 security deposit in full that has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order in the amount of \$955.00 for the amount owing by the tenants to the landlord pursuant to sections 67 and 72 of the *Act*. The landlord must first serve the tenants with the monetary order before applying to enforce the monetary order through the Provincial Court, Small Claims Division.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 11, 2018

Residential Tenancy Branch