



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* for a Monetary Order for Compensation, to retain the security deposit towards the compensation owed, and for the recovery of the filing fee paid for this application.

The Landlord and Tenant were present for the duration of the teleconference hearing. Both parties were affirmed to be truthful in their testimony and confirmed that service of the Notice of Dispute Resolution Proceeding package and copies of their evidence were exchanged as required.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for compensation?

Is the Landlord entitled to retain the security deposit towards compensation owed?

Background and Evidence

Both parties were in agreement as to the details of the tenancy. The tenancy began on December 1, 2017 and was for a fixed term of one year, set to end on November 30, 2018. Monthly rent was \$1,400.00 and a security deposit in the amount of \$700.00 was

paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount.

On March 31, 2018, the Tenant provided written notice to the Landlord that he would be ending the tenancy on May 1, 2018. The Landlord testified that she advertised the unit for rent right away and had potential tenants come to look at the unit. However, as she was not able to find tenants that were the right fit, she decided she would move back into the rental unit.

On April 16, 2018 the Landlord texted the Tenant to notify him that she would be moving in on June 1, 2018. The Landlord also informed the Tenant that he would be responsible to compensate her for the loss of rent for the month of May 2018 due to breaking the one-year fixed term tenancy agreement.

On April 18, 2018, the Tenant sent an email to the Landlord requesting permission to sublet the rental unit for the remainder of the fixed term. On April 20, 2018, the Landlord responded in a text message stating that she did not agree to a sublet as she did not want to go through the stress of having a tenant in the unit again and instead would be moving in on June 1, 2017. The Landlord also asked whether there was a way to meet in the middle, instead of either of them being responsible to cover the costs of the unit for May 2018.

On April 20, 2018, the Tenant sent an email to the Landlord agreeing to pay \$700.00 to cover half of the rent for May 2018, if the Landlord signed a mutual agreement to end the tenancy. The Residential Tenancy Branch mutual agreement form was attached to the email. The mutual agreement to end the tenancy was signed by both parties on April 20, 2018.

A move-out condition inspection report was completed on May 1, 2018 at which time the keys to the rental unit were returned to the Landlord. The condition inspection report was not submitted as evidence, but both parties agreed that the report did not note any damage to the unit and the Tenant did not provide permission for the Landlord to withhold any amount of the security deposit for damages. At this time, the plan was still for the Tenant to pay \$700.00 to compensate the Landlord for half of the rent for May 2018. The \$700.00 was to be paid through the Tenant providing permission for the Landlord to retain the security deposit.

On May 7, 2018, the Tenant sent a text to the Landlord stating that he had become aware that the Landlord was occupying the rental unit already and as such, that he no

longer agreed to pay half of the month's rent for May 2018. The Tenant submitted into evidence a noise complaint letter dated May 9, 2018 from the strata council of the building and also stated that he was notified by a neighbour that there were occupants in the rental unit.

The Tenant testified that on May 8, 2018, he met with the Landlord and provided her with a written request for the return of his security deposit along with his forwarding address. The Tenant submitted that he was trying to be generous by offering to pay half of the rent for May 2018 given that the Landlord was unable to move in until June 2018. However, once he believed she had moved in for May 2018, he changed his mind and requested the return of the security deposit.

The Landlord provided testimony that she was not living in the rental unit in May 2018, but that her family had helped her move some items into the unit and she was having renovations completed before moving in for June 2018. Due to a shift work schedule, she had help to move in some of her items to the rental unit in May 2018, despite not planning to move in until June. She submitted that she is unsure of what the noise complaint was referencing and noted that the date on the noise complaint letter is also not accurate as the date and day of the week do not match.

The Landlord testified that the Tenant provided her permission through verbal agreement and by text messages that she could retain the security deposit as compensation for half of the rent for May 2018. She was surprised when she received notification on May 8, 2018, that the Tenant had changed his mind and was requesting the return of the \$700.00 security deposit and no longer wanted to offer compensation to the Landlord.

Analysis

The Tenant and Landlord were in agreement as to the terms of the tenancy, as well as the timeline of events that had occurred when the Tenant chose to end the tenancy. As both parties agreed as to the events that took place, yet the disagreement as to the security deposit and compensation for unpaid rent remains, I look to the *Residential Tenancy Act* (the *Act*) to determine which party is entitled to the security deposit and whether compensation for May 2018 is owed.

The Tenant provided written notice on March 31, 2018 that he would be moving out of the rental unit on May 1, 2018. Section 45(2)(b) states that a notice to end a fixed term tenancy cannot state the end of tenancy date as prior to the date that the fixed term

ends. As such, I find that the Tenant was not in compliance with the *Act* when he ended his fixed term tenancy early through his written notice dated March 31, 2018.

In accordance with this, I find that the Tenant may have been responsible to compensate the Landlord for loss that occurred due to his non-compliance with the *Act*

However, on April 20, 2018, the parties signed a mutual agreement to end the tenancy pursuant to Section 44(1)(c). Although this agreement was not submitted into evidence, both parties testified that the mutual agreement ended the tenancy on May 1, 2018 and was signed by the Landlord and Tenant.

Residential Tenancy Policy Guideline 30: Fixed Term Tenancies outlines the ways in which a fixed term tenancy can be ended and states the following, "A landlord and tenant may agree in writing to end a fixed-term tenancy before its expiry date. A Mutual Agreement to End Tenancy (form RTB-8) is preferred but not required."

In accordance with the *Policy Guideline 30*, I find that the mutual agreement signed on April 20, 2018 ended the fixed term tenancy. As the fixed term tenancy was ended May 1, 2018, after this date the Tenant no longer had responsibilities to fulfill for the remainder of the fixed term agreement. Although the Tenant provided notice to end the tenancy on March 31, 2018, as the tenancy had not yet ended on April 20, 2018 when the mutual agreement was signed, I find that the mutual agreement overrides the Tenant's original notice.

I look to Section 38 of the *Act* to determine the requirements for the security deposit at the end of a tenancy. Section 38(1) of the *Act* states that a landlord has 15 days from the later date of the tenancy ending or the forwarding address being provided in writing to repay the security deposit or file a claim against it. As the tenancy ended May 1, 2018 and the Tenant provided his forwarding address in writing on May 8, 2018, I find that the Landlord had 15 days from May 8, 2018 to repay the security deposit or file a claim against it. As the Landlord's application was submitted May 8, 2018, she applied within the timeframe allowable under the *Act*.

As the Landlord was in compliance with Section 38(1), I find that the Tenant is not entitled to the return of double the security deposit pursuant to Section 38(6). However, as outlined above, I find that the tenancy ended by mutual agreement on May 1, 2018, meaning that the Tenant's obligations to pay for the rental unit did not extend beyond this date and therefore compensation is not owed for rent beyond the end of the

tenancy. As the fixed term tenancy was ended by mutual agreement, the Tenant is not responsible to pay rent for May 2018.

In accordance with the above analysis, I find that the Tenant is entitled to the return of the full security deposit in the amount of \$700.00.

As the Landlord was not successful in their claim, I decline to award the recovery of the filing fee paid for this application.

Conclusion

Pursuant to Section 38 of the *Act*, the Landlord is ordered to return the security deposit to the Tenant in the amount of \$700.00.

To uphold this decision, I grant the Tenant a **Monetary Order** in the amount of **\$700.00** for the return of their security deposit. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: June 27, 2018

Residential Tenancy Branch