# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCLS FFL MNSD FFT

Introduction

This hearing dealt with application from both the landlords and tenant under the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlords applied for

- a monetary order for unpaid rent and compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was assisted by her counsel JB. The landlord AJ (the "landlord") primarily spoke on behalf of both co-landlords.

As both parties were present service was confirmed. The landlords confirmed receipt of the tenant's application and evidence. The tenant confirmed receipt of the landlords' application for dispute resolution and evidence. Based on the undisputed evidence of the parties I find that the parties were each served in accordance with sections 88 and 89 with the respective materials.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Is either party entitled to recover the filing fee for their application from the other?

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 parties' claims and my findings around each are set out below.

The parties agreed on the following facts. This fixed-term tenancy began in August, 2017 and was scheduled to end May, 2018. The tenant gave notice to end the tenancy on September 1, 2017 and moved out by October 1, 2017. The monthly rent was $1,600.00 payable on the first of each month along with $20.00 for utilities. A security deposit of $800.00 was paid at the start of the tenancy and is still held by the landlords. No condition inspection report was prepared at either the start or the end of the tenancy.

The landlord submits that while they did their best to mitigate their losses, the tenant provided insufficient notice of the end of tenancy and $1,600.00 for October, 2017 rent is due and owing.

The landlord said that they have their particular system for finding and vetting new tenants and refused the tenant's suggestion to assign the fixed term tenancy or review potential candidates identified by the tenant. The landlord claims the amount of $600.00, representing 12 hours of labour preparing for a new tenancy. The landlord testified that those hours included posting the rental unit, interviewing candidates and performing credit checks as well as time spent dealing with the strata corporation for the building.

The landlord also said that they were issued a fine of $10.00 from the strata corporation of the building as the tenant parked a vehicle in their stall without proper indication of current insurance. The landlord submitted a series of letters from the strata in regards to the $10.00 fine.

The tenant gave undisputed evidence that they provided a forwarding address to the landlord by email on September 29, 2017, and subsequently by a letter dated

November 2, 2017. The tenant testified that they had not given written authorization that the landlord may retain any portion of the security deposit for this tenancy.

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.

In the case at hand the undisputed evidence before me is that the tenant provided a forwarding address by email on September 29, 2017 and again by a letter of November 2, 2017. The tenant did not give written authorization that the landlord may retain any portion of the security deposit. The landlord did not file an application for dispute resolution until March 25, 2018.

Based on the undisputed evidence before me, I find that the landlords neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days from November 2, 2017. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an $1,600.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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.

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."

I find that the landlords were provided several opportunities to mitigate their losses by the tenant and they failed to take reasonable action at each instance. The undisputed evidence is that the tenant gave notice to the landlord on September 1, 2017 and moved out by October 1, 2017. The parties gave evidence that the tenant initially suggested assigning the tenancy agreement pursuant to section 34(2) of the *Act* as the fixed term tenancy had more than 6 months remaining at the time. The landlord said that they refused the tenant's suggestion and informed her that they have their own system to find the right person.

The landlord submits that they conducted their own search as it was important to them that they "find the right person". The landlord did not articulate what they considered the attributes of the "right person". The landlord testified that they entered into a new tenancy agreement commencing November 1, 2017 for a monthly rent of $1,700.00.

I find that there is insufficient evidence that any losses suffered by the landlords are a result of the tenant's violation of the Act, regulations or tenancy agreement. The landlords unreasonably, and in violation of section 34(2) of the *Act*, withheld their consent to assign the remaining term of the fixed term tenancy. I find that any rental losses that occurred to be a direct result of the landlord's unreasonable withholding of consent.

I further find that there is insufficient evidence that the landlord took reasonable actions to mitigate and minimize their losses. In a municipality with less than 1% vacancy rate, I do not find the landlord's submission that they were unable to find a new tenant who could begin their tenancy any earlier than November 1, 2017 to be at all credible. The landlords testified that they were looking for the "right person" but did not articulate the characteristics of someone they consider to be appropriate. The landlords gave evidence that they are charging a higher rent for the new tenancy which began in November, 2017, a mere four months after this fixed-term tenancy started.

I find that the landlords have failed to act reasonably to minimize their losses. Any damages or loss they may have suffered are borne entirely out of the landlords' own actions and negligence. Consequently, I dismiss this portion of the landlord's claim.

I find that there is insufficient evidence in support of the landlord's claim for labour hours in the amount of $600.00. The landlord failed to provide a detailed account as to what work, if any, were performed. The landlord gave some testimony about advertising the rental unit, vetting the candidates and dealing with the strata corporation. However, I find that there is little evidence in support of the landlords' claims. It is not open for a landlord to simply claim a monetary award without providing details or documentary evidence in support of their claim. Furthermore, as noted above, I find that any loss the landlords may have incurred for starting a new tenancy is borne out of their violation of the Act by unreasonably refusing to assign the fixed term tenancy. The landlords may not incur losses due to their own failure to comply with the Act, or take reasonable steps to mitigate their losses, and subsequently attempt to reclaim these same losses from a tenant. I dismiss this portion of the landlord's claim.

The landlord claims the amount of $10.00 for a fine from the strata. The parties gave evidence that the notice letters from the strata were delivered to the rental address and as they were addressed to the landlord, the tenant simply collected them but did not open them until the landlord periodically would pick them up. The parties testified that the landlord informed the tenant of the need to display proper insurance on their vehicle sometime in late August, 2017. The tenant testified that there were delays in transferring and obtaining the insurance decals from out of the province.

Based on the series of correspondence from the strata corporation I find that the $10.00 fine does not arise from the tenant's violation. The strata issued a notice of infraction letter dated August 15, 2017 with an invitation to provide a response within two weeks of the issuance of the letter. No evidence was provided that the landlord responded to the strata or informed the strata of the reasons given by the tenant for the contravention. While there may have been a strata infraction the landlord had the opportunity to respond and provide information to dispute the notice. The landlord failed to do so. I find that the $10.00 fine arises from the landlord's failure to advise the tenant of the violation, failure to respond to the strata and not taking appropriate action. Consequently, I dismiss this portion of the landlord's claim.

As the tenant was successful in their application the tenant may recover the $100.00 filing fee from the landlords.

Conclusion

I issue a monetary award in the tenant's favour in the amount of $1,700.00.

The landlord's application is dismissed 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: July 11, 2018

Residential Tenancy Branch