



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT MNDLS FFL MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for 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 tenant pursuant to section 72.

The tenants applied for:

- a return of the security deposit and pet damage deposit for this tenancy pursuant to section 38;
- a monetary order for damages or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord represented herself with the assistance of her partner.

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

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to the security and pet damage deposit?

Is either party entitled to recover the filing fee 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 periodic tenancy began in October, 2015 and ended February, 2018. The monthly rent at the end of the tenancy was \$2,650.00 payable on the first of each month. A security deposit of \$1,300.00 and pet damage deposit of \$1,300.00 were paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at the start of the tenancy. The parties prepared a condition inspection report at the end of the tenancy on February 25, 2018 and the tenant provided a forwarding address at that time.

There was a previous hearing under the file number on the first page of this decision dealing with the tenant's dispute of a 2 Month Notice to End Tenancy for Landlord's Use issued sometime in August, 2017. The hearing resulted in a settlement agreement between the parties. The tenant testified that the 2 Month Notice was invalid as it did not conform with the form and content requirement of the *Act*.

The tenant seeks a monetary award in the amount of \$31,800.00, the equivalent of 12 months' rent as they submit that the landlord did not occupy the rental unit as they stated they intend to do in their 2 Month Notice letter. The tenant also seeks a monetary award in the amount of \$5,200.00 double the value of the security and pet damage deposit paid for this tenancy which has not been returned.

The landlord testified that the rental unit was pristine and new at the start of the tenancy and it required considerable cleaning and repairs at the end due to the tenant. The landlord lists in the move-out condition inspection report the damages include broken windows, and the need to fully replace the carpets due to the smell of animals.

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).

Additionally, section 24 of the *Act* provides that if the landlord does not complete a move-in condition inspection report in accordance with the guidelines, they extinguish their right to claim against the security deposit.

The parties gave undisputed evidence that no condition inspection report was prepared at the start of the tenancy. Accordingly, I find that the landlord has extinguished their right to claim against the security deposit for damage to the rental unit.

I accept the undisputed evidence that the tenant provided the landlord with their forwarding address in writing on the move-out inspection report of February 25, 2018. I accept the evidence of the tenant that the landlord failed to return the full security deposit and pet damage deposit to the tenant within 15 days of February 25, 2018, the time frame granted under section 38 (1)(c) of the *Act*. The landlord's right to claim against the security deposit was extinguished by their failure to complete a condition inspection report at the start of the tenancy in any event.

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 \$5,200.00 Monetary Order, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

The tenant claims the equivalent of 12 month's rent pursuant to section 51 of the *Act* as the landlord failed to occupy the rental unit. The provision of the *Act* the tenant quotes came into force on May 17, 2018 and is not retroactively effective. Accordingly, I find that there is no legislative basis for the monetary award sought by the tenant.

Furthermore, the tenant testified that no 2 Month Notice that complies with the form and content requirement of the *Act* was issued. The tenant said that the notice issued by the landlord was simply a letter and not a proper Notice. The parties testified that the tenancy ended by way of a settlement agreement. I accept the evidence of the tenant that no proper 2 Month Notice was issued by the landlord. Accordingly, I find that there is no right to compensation under the *Act* as no effective 2 Month Notice was issued. The tenant cannot submit that no proper 2 Month Notice was issued and simultaneously claim that they are entitled to a monetary award on the basis of a 2 Month Notice.

Based on the evidence, including the testimony of the tenant, I find that there was no effective 2 Month Notice issued. This tenancy ended by way of the settlement agreement recorded in the November 23, 2017 agreement. I note that the agreement does not articulate that any Notice to End Tenancy is cancelled as one would expect when a settlement agreement replaces a valid Notice. As no valid 2 Month Notice was issued the tenant has no basis for a claim for a monetary award arising from the landlord's use of the property. I dismiss this portion of the tenant's 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.

I find that there is insufficient evidence in support of the landlord's application for damages and loss. In the absence of a condition inspection report prepared at the start of the tenancy I find that there is insufficient evidence regarding the original condition of the suite. I find that the landlord has provided insufficient evidence to show that the damages and loss claimed in their application arises as a result of the violation of the *Act*, regulations or tenancy agreement on the part of the tenant. I find that the landlord's suggestion that major painting and replacement of carpets was required to not be supported in the evidence. As I find that the landlord has not established on a balance of probabilities that the tenant has violated the *Act*, regulations or tenancy agreement giving rise to monetary damages and loss I dismiss the landlord's claim without leave to reapply.

As the tenant's application was not wholly successful I decline to issue an order allowing recovery of filing fees.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$5,200.00 which allows for the recovery of double the security and pet damage deposit for this tenancy. 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.

The balance of the tenant'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: September 21, 2018

Residential Tenancy Branch