



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave affirmed testimony. The landlord confirmed receipt of the tenant's Notice to End Tenancy dated March 7, 2018 but they denied receipt of the tenant's application. The postal website confirmed it was served by registered mail available for pickup from May 1, 2018 and notices were left until May 8, 2018 but the landlords said they were out of town. The tenant agreed she received the landlord's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing although the tenant's Application was not picked up. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38;
- e) A refund of half of one month's rent; and
- f) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant breached a fixed term lease and damaged the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security deposit refunded and to a refund of rent and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. Although the landlord did not receive the tenant's Application, I find they had sufficient knowledge of the circumstances and evidence to proceed with the cross application. The landlord had thought the tenant cancelled her application but discovered it was another file number. Both parties accused each other of lying. It is undisputed that the tenancy commenced January 15, 2018 on a fixed term lease for one year; a tenancy agreement is in evidence. The tenant said she never got a copy of the lease and never intended to sign a one year fixed term agreement as she had put month to month on her application. Rent was \$1400 a month and a security deposit of \$700 was paid (\$500 by contribution of a washer and dryer to be kept by the landlord and \$200 in cash).

The tenant gave notice to end her tenancy for March 31, 2018 and the landlord sent a letter (in evidence) warning her of the continuing rental obligations of the fixed term lease. The landlord was able to re-rent the suite for September 1, 2018. They claim 5 months of rental loss for a total of \$7000 (5x\$1400), that is from April 1, 2018 to August 31, 2018. They confirmed the tenant paid rent for March 2018. The landlord said he is waiving his claim for compensation for damages as he has no receipts and lost his photographs which were in his camera that fell into the water. Both parties confirmed the tenant served her forwarding address in another province and it was received by the landlord on March 21, 2018.

The tenant claims she had to move out because the landlord had a grow-op that was impairing her health and the insurance company refuses to insure her furnishings if there is a grow op in the home. In evidence is a letter from an insurance company. The landlord said this is a lie. There is no grow op in their home and no proof of one. He said the tenant got a job in another province and was trying to manufacture some evidence to allow her to legally break her lease. The tenant also claims the landlord would not allow her back on the premises after March 18, 2018 when he sent an email to her telling her this (in evidence). The landlord said the Police advised them not to allow the tenant into the property again as her belongings were all gone and she was causing mischief to the property. The tenant said she should get her security deposit refunded for no condition inspection was done and no copy of a lease was provided.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

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 whatever was reasonable to minimize the damage or loss.

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord satisfied the onus of proving the tenant breached her fixed term lease by vacating in March 2018. Section 45 of the *Act* provides:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [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

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

I find the tenant's Notice given on March 7, 2018 is not effective until January 14, 2019 as this was a one year fixed term lease. The tenant then is responsible for rent until the end of the term. However, the landlord has the duty to mitigate the damages by re-renting as soon as possible. I find the landlord exercised their duty and re-rented for September 1, 2018 so at that time the lease with this tenant was at an end. I find the tenant is responsible for rental loss from April to August 2018 (5 months at \$1400 = \$7,000). I find the landlord entitled to compensation of \$7000 for rental loss.

I find insufficient evidence to support the tenant's claim that this home was a grow-op and she was forced to leave for health or insurance reasons. I find the insurance letter in evidence does not indicate any professional inspection of the home was done to determine if there was a grow op and the letter very conveniently coincides with the tenant's desire to end the tenancy as she got a job in another province. I find she breached her fixed term lease and is responsible for the consequences.

As the landlord waived his claim for further damages, this portion of his application is dismissed. Although the tenant notes they did not do a condition inspection report, I find this is not relevant as the landlord is claiming no damages. Although the tenant claims she did not get a copy of the tenancy agreement, I find she noted the absence of the Condition Inspection Report on her Application but did not mention the lack of a copy of the tenancy agreement until the hearing. In the hearing, she said she did not get a copy with the landlord's evidence; I find this is inconsistent with the evidence that he served all his evidence by registered mail and the tenant received it. I find the fact that the landlord filed the tenancy agreement with the Residential Tenancy Branch at the same time as all their other evidence supports their credibility that it was in the package sent to the tenant.

On the tenant's application, the onus is on her to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. **Section 38(1)** of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the tenant vacated on or about March 18, 2018 and provided her forwarding address in writing on March 21, 2018. I find the landlord has not refunded the tenant's security deposit. However, I find this fixed term tenancy did not legally end until August 31, 2018 when the landlord accepted it as being ended by re-renting the unit. I find the landlord filed their application on April 6, 2018 which is within the 15 day limitation set out in section 38 of the Act even if the tenancy ended on March 31, 2018.. Therefore, I find the tenant not entitled to the doubling of her deposit. Her deposit will be used to offset the amount owing to the landlord.

In respect to the tenant's claim for half a month rent refund because the landlord refused to allow her back into the home, I find for the reasons set out above, she is responsible for rent until August 31, 2018 so she is responsible for the last half of March rent which she paid so is not entitled to a refund. I find insufficient evidence that the landlord acted illegally in not allowing her continued access as he was acting on advice from the Police as all her belongings were gone and it appeared that she was causing some damage to the property.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for her application. I find the landlord entitled to compensation as calculated below and to retain the security deposit to offset the amount owing. I find them also entitled to recover their filing fee.

Calculation of Monetary Award:

Rental Loss April to Aug 2018	7000.00
Filing fee	100.00
Less security deposit	-700.00
Total Monetary Order to Landlord	6400.00

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 13, 2018

Residential Tenancy Branch