



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FFT FFL MNRL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for monetary losses pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

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

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with each other’s Applications and evidence.

As neither party was opposed, the tenant LR’s name was amended on the landlord’s application as her first and last name were in the wrong order.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for monetary losses?

Are the tenants entitled to the return of all or a portion of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This month-to-month tenancy began on May 1, 2017 with monthly rent set at \$2,100.00. The landlords collected a security deposit in the amount of \$1,050, which the landlords still hold. The tenants moved out on February 28, 2018 after giving notice to the landlords on February 6, 2018. The tenants provided their forwarding address as part of that notice.

The landlords testified that they had attempted to re-rent the home, but the tenants were not cooperative and refused access to prospective renters. The tenants testified that only one prospective tenant was scheduled to view the property, but did not show up. The landlord confirmed that they had never given written notice to the tenants, and notified the tenants by phone of showings. The landlords confirmed that in June 2018 they had decided to not rent the property and demolish the home instead. The landlords are seeking a monetary order for loss rental income for one month in the amount of \$2,100.00

The tenants testified that the landlords did not return their security deposit to them despite the provision of the forwarding address. The landlords testified that they had kept the security deposit to cover the losses they suffered due to the tenant's failure to give adequate notice.

The Both parties requested the return of their filing fees.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 45 of the *Residential Tenancy Act* reads in part as follows:

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.

While the tenants did notify the landlord of the termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they gave less than one month's notice as required by section 45(1) of the *Act*. I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlords is that they were not able to re-rent the home after two months due to the failure of the tenants to provide access, and the landlords decide to demolish the home instead. The tenants dispute that they had ever refused access, and the tenants feel the landlord did not suffer a monetary loss due to their actions.

Section 29 of the *Act* prohibits the landlords' right to enter the rental suite except with proper notice or the tenants' permission. The landlords' right to enter a rental unit is restricted, and the landlords must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Although it was disputed whether the tenants allowed access to the home for the purpose of viewings, I find that the landlords have failed to comply with section 29(1) of the *Act* by failing to give written notice to the tenants. Furthermore I am not satisfied that the landlords provided sufficient evidence to support that they had made efforts to mitigate the tenants' exposure to the landlord's monetary loss of rent, as is required by section 7(2) of the *Act*. I, therefore, dismiss the landlords' claim for a monetary order for loss of rental income as the landlords failed to

provide sufficient evidence to support that they suffered a loss due to the tenants' failure to comply with the *Act*, and that the landlords made efforts to mitigate the tenants' exposure to that loss.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlords had not returned the tenants' security deposit in full within 15 days of the move-out date of February 28, 2018. There is no record that the landlords applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit until April 20, 2018, almost 2 months later.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit, also totaling an entitlement to a monetary award of \$2,100.00.

As the tenants were successful with their monetary claim, I allow them to recover the \$100.00 filing fee from the landlords. As the landlords were not successful with their monetary claim, I dismiss the landlords' application to recover the filing fee without leave to reapply.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security deposit, plus a monetary award equivalent to the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

| Item | Amount |
|--|-------------------|
| Return of Security Deposit | \$1,050.00 |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> | 1,050.00 |
| Recovery of Filing Fee | 100.00 |
| Total Monetary Order | \$2,200.00 |

The tenant(s) are provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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 landlord's entire monetary 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: October 18, 2018

Residential Tenancy Branch