



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FFL MNDL-S 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 landlord requested:

- a monetary order for unpaid rent, losses, and money owed 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.

AF attended the hearing as the landlord’s agent. 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 landlord and tenant were duly served with each other’s Applications and evidence.

At the outset of the hearing the tenants indicated that they were withdrawing their application. Accordingly, the tenants’ application was considered withdrawn.

The landlord’s agent indicated at the beginning of the hearing that they were reducing their monetary claim, and was only pursuing a loss of rental income in the amount of

\$881.00 plus recovery of the filing fee. Accordingly, the remaining portion of the landlord's monetary claim was withdrawn.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order requested?

Is the landlord entitled to recover the filing fee?

Background and Evidence

This month-to-month tenancy began in July of 2016 with monthly rent set at \$881.00. The landlord collected a security deposit in the amount of \$425.00. The tenants testified that they moved out on June 30, 2018, and returned the keys on July 5, 2018. The landlord testified that the tenancy ended on July 5, 2018.

It was undisputed by both parties that the tenants gave notice on June 1, 2018 for this tenancy to end on June 30, 2018. The landlord is seeking a month's rent in compensation for losses as the tenants did not move out until July 5, 2018, and due to the late notice, the landlord was not able to re-rent the unit until September 1, 2018 despite advertising the unit as soon as June 4, 2018.

The tenants are disputing the amount claimed by the landlord as they feel the landlord gave them permission to withhold the return of the keys until July 5, 2018 in order to finish cleaning the rental unit. The tenants also feel the landlord failed to mitigate their losses by only doing one showing on June 19, 2018. The landlord responded that they advertised the rental unit using as many resources as possible and only schedule viewings with approved applicants.

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 landlord 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 landlord is that they were not able to re-rent the home until September 1, 2018 due to the failure of the tenants to give proper notice to the landlord.

Furthermore, I find that the tenants did not return the keys to the landlord and give full vacant possession to the landlord until July 5, 2018. The tenants did not pay any rent for the month of July 2018 despite the over holding. I find that the evidence shows that as a result of the tenants' actions, the landlord suffered a rental loss. The evidence of the landlord is that they were able to re-rent the unit after about a month of vacancy. Based on the landlord's efforts I am satisfied that they had sufficiently mitigated the tenants' exposure to the landlord's monetary loss of rent for August 2018 by advertising the unit for rent immediately, as is required by section 7(2) of the *Act*. I therefore allow the landlord's claim for a monetary order for rental differential loss in the sum of \$881.00 for the month of lost rental income.

As the landlord was successful with their monetary claim, I allow them to recover the filing fee for this application.

The landlord continues to hold the tenants' security deposit of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$556.00 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenants' security deposit in satisfaction of their monetary claim..

Loss of Rental Income for August 2018	\$881.00
Recovery of Filing Fee	100.00
Less Security Deposit Held by Landlord	-425.00
Total Monetary Award	\$556.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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 remaining portions of the landlord and tenants' application were withdrawn by both parties.

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: November 20, 2018

Residential Tenancy Branch