



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF / MNDC MNSD FF

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:

Landlord:

- a monetary order for compensation for loss and/or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Preliminary Issue: Service of Landlord’s Application and Evidence

This tenancy ended in the beginning of April 2018. The landlord acknowledged receiving the tenants forwarding in address on May 3, 2018. The tenants filed their application and it was served on the landlord in mid-June 2018. The landlord did not file his application until 15 days prior to this hearing. The landlord served his application on the tenants on October 25, 2018 which is 14 days prior to the hearing as required. However, the landlord did not serve any evidence in support of his application on the tenants until November 1, 2018, only 7 days prior to this hearing date.

Rule 3.14 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires an applicant's evidence to be received by the respondent and the Branch not less than 14 days before the hearing. The landlord failed to show why this evidence was not available at the time the landlord's application was served on the tenants.

I find the tenants have been prejudiced by the landlord's late application and specifically the service of the landlord's evidence and did not have a sufficient opportunity to submit any response to the landlord's application. For this reason, I dismissed the landlord's application with leave to reapply.

Issues

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

Are the tenants entitled a monetary order for compensation for damage or loss?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on November 1, 2014 and there appears to have been a series of consecutive one year fixed term leases entered into after this time. The tenancy ended effective March 31, 2018 pursuant to a 2 Month Notice to End Tenancy. The tenants testified that they vacated on April 1, 2018, the landlord argues it was April 4, 2018 by the time the tenant's removed all their possessions. The monthly rent as per the latest lease agreement was \$2150.00. The tenants paid a security deposit of \$800.00 and a pet deposit of \$400.00 at the start of the tenancy which the landlord continues to retain.

The tenants had paid rent in full for the full month of March 2018 as they were disputing the 2 Month Notice.

The tenants are claiming the equivalent of one month's rent as compensation for notice to end tenancy for landlord's use of property. The tenants claim they did not get one month free rent under the Act.

The tenants are also claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants provided the forwarding address to the landlord in writing on April 13, 2018.

The landlord disputes the one month free rent and argues he was forced to issue the 2 Month Notice as the tenants refused to renew the fixed term lease as they had in previous years.

The landlord acknowledged receiving the forwarding address on May 3, 2018.

Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

The landlord has not provided the tenant's with an equivalent of one month's rent. The landlord's argument that the tenants refused to renew a fixed term agreement has no merit. If the tenants refused to renew a fixed term lease the landlord could have exercised his right to file for an order of possession based upon the end of the fixed term at that time if the legislation permitted it at the time in question.

I allow the tenants claim for an amount equivalent to one month's rent and award an amount of \$2150.00.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I find the tenants did provide a forwarding address in writing to the landlord. The landlord acknowledged receiving the forwarding address on May 3, 2018. The tenants' security deposit was not refunded in full within 15 days nor did the landlord file an application to claim against the deposit as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$2400.00, which is double the original security and pet deposit of \$1200.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$4650.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$4650.00. 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.

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 09, 2018

Residential Tenancy Branch