



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: MNSD, FFT
Landlords: MNDCL-S, MNDL-S, FFL

Introduction

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

The tenants applied for:

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlords pursuant to section 72 of the *Act*.

The landlords applied for:

- a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and authorization to retain the tenants' security deposit in partial satisfaction of this claim pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's applications and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement? If so, are the landlords entitled to retain all or a portion of the security deposit in satisfaction of their claim against the tenants? If not, are the tenants entitled to the return of all or a portion of the security deposit, or a doubling of the security deposit?
Is either party entitled to recover the filing fee for their application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This 12-month fixed-term tenancy began on September 15, 2017, with a scheduled end date of August 31, 2018.
- Monthly rent of \$2,950.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$1,500.00 which continues to be held by the landlords.
- The tenants gave notice on June 8, 2018 to end their fixed-term tenancy early on June 30, 2018. The tenants moved out on June 30, 2018.

The tenants testified that they were concerned the landlords were planning to sell the rental unit in the near future, and that this would leave them in a challenging situation of trying to find new accommodations in a tight rental market during the school year, resulting in disruption to their family's life. As such, they decided to give notice to end their tenancy early. The tenants thought the landlords had agreed to the early end of tenancy and referenced an email in which the landlords responded to the tenants notice to end the tenancy with "we understand". However, I note that no Mutual Agreement to End Tenancy was signed by the parties to formalize an agreement to end the tenancy early.

The landlords testified that they did not receive the tenants email notice to end tenancy on June 8, 2018 but rather they received it later on June 14, 2018. They stated that on June 22, 2018 they advertised the rental unit for re-rent on a popular classified website, seeking monthly rent of \$3,100.00. They stated that they interviewed many interested applicants. The landlords confirmed that they signed a one-year tenancy agreement with new tenants on August 27, 2018 for a tenancy beginning September 1, 2018.

The landlords are seeking compensation for lost rental revenue for one month of rent of \$2,950.00.

The landlords are also seeking compensation for damages as follows:

Item	Amount
Two sofa pillows	\$403.20
Deadlock replacement	\$55.98
Stand-alone fireplace repair (window gasket & broken window)	\$191.55
Total Monetary Award for Damages	\$650.73

The tenants acknowledged that they washed the pillows which resulted in the pillows being shrunk beyond use.

The tenants acknowledged that they had been unable to find the spare key for the deadlock until after the tenancy ended.

The tenants testified that there had been a small crack in the fireplace glass window at the beginning of the tenancy, but acknowledged that at some point during the tenancy, through normal use, the glass broke.

Analysis

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.

The burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. A claimant is not eligible for compensation that is found to be a penalty against the other party, as opposed to an actualized loss. Finally, it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

I have addressed the landlords' heads of claim separately below.

1) Lost Rental Revenue

The tenants claimed that they thought the landlords had agreed to the early end of tenancy, however as a Mutual Agreement to End Tenancy was never signed by the parties, I do not find there is sufficient evidence to prove that there was a mutual agreement to end the tenancy early on behalf of both parties.

The landlords are seeking compensation for lost rental revenue for one month of rent of \$2,950.00 on the basis that the tenants ended the fixed-term tenancy early in contravention of section 45(2) of the *Act*, which states:

A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

The tenants testified that they were concerned the landlords planned to sell the rental unit in the near future, which would leave them struggling to find another rental unit in a low-vacancy rental market, resulting in disruption to their family life.

Section 45.1(2) of the *Act*, provides limited criteria for ending a fixed-term tenancy early, as follows, in part:

- (2) A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming one of the following:
 - (a) if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant;
 - (b) the tenant has been assessed as requiring long-term care;
 - (c) the tenant has been admitted to a long-term care facility.

Based on the testimony of the tenants, I find that the tenants' reasons do not meet the criteria under section 45.1 of the *Act*. Therefore, I find the tenants contravened the *Act* by ending a fixed-term tenancy early.

Residential Tenancy Policy Guideline 5. Duty to Minimize Loss provides guidance regarding the expectation for a landlord to mitigate a rental income loss due to a tenant ending a tenancy in contravention of the *Act*, as follows:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent.

The landlords advertised the rental unit for rent on June 22, 2018 at a monthly rent of \$3,100.00. I find this to be a reasonably economic rent given the fact that the landlords were able to find new tenants after advertising the rental unit for approximately one month. Further to this, the tenants were paying \$2,950.00 and would have been eligible for a rent increase of 4% (allowable rent increase for 2018), bringing the rent to \$3,068.00, had they continued their tenancy after the one-year fixed term completed.

I find that the landlords made reasonable efforts to find a new tenant by listing the rental unit eight days after confirming the tenants wanted to end the tenancy early.

As such, I find the landlords are entitled to compensation for one month's rent of \$2,950.00.

2) Compensation for Damages

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

As the tenant acknowledged that the pillows were accidentally damaged beyond use, I find that the landlord is entitled to compensation for this item in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements, which states, in part:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 provides a useful life of 10 years, or 120 months, for furniture. As the receipt for the pillows was dated March 20, 2016, the pillows were 27 months old at the end of the tenancy on June 30, 2018. Therefore, as the pillows had 77.5% of useful life remaining, the landlord is entitled to 77.5% of the price paid for the pillows as compensation, which equals \$312.48.

Section 25 of the *Act* sets out that it is the landlord's responsibility regarding rekeying locks, as follows:

Rekeying locks for new tenants

- 25 (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).
- (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

This is further explained in Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, which sets out the responsibilities for landlords and tenants regarding maintenance, cleaning, and repairs of residential property. Paragraph 6, under the section titled "Security", states:

6. *The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or*

a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

In this case, the tenant did not damage the lock, rather the tenant failed to return a spare key and as such the landlord decided to replace the lock in anticipation of re-renting the unit. The *Act* and Policy Guideline 1 are clear that in cases other than damage caused by the tenant, the landlord is responsible for all costs related to rekeying or otherwise altering the locks so that keys given to the previous tenant do not give access to the rental unit. Therefore, I decline the landlord's request for reimbursement for this expense.

The written condition inspection report completed at move-in and signed by the one of the tenants does not note any existing damage to the stand-alone fireplace glass door. A written condition inspection report was not completed and signed by the parties at the end of the tenancy, however, the fireplace glass door damage was noted during the condition inspection walk-through. The tenant acknowledged that at some point the glass broken when he closed the fireplace glass door. The landlords estimated the age of the fireplace at around 20 years.

Policy Guideline 40 provides a useful life of 15 years for heating systems. Therefore, as the useful life of the stand-alone fireplace has been exceeded, there is no depreciated value remaining. As such, there is no compensation available to the landlords for the repair of this item as it has exceeded its estimated useful life.

In summary, I find that the landlords are entitled to a monetary award of \$3,262.48 for compensation for lost rental revenue and damages, as follows:

Item	Amount
Lost rental revenue for one month	\$2,950.00
Two sofa pillows	\$312.48
Total Monetary Award for Compensation	\$3,262.48

Set-off of Landlords' Claim Against Security Deposit

The tenants failed to provide the landlords with a forwarding address in writing. As such, the tenants' application for the return of the security deposit was premature as they had not fulfilled their obligation to provide their forwarding address to the landlords in order to trigger the requirements under section 38 of the *Act* for handling of the security deposit at the end of a tenancy. The landlords only received the tenants' forwarding address through the "Address for Service" provided on the tenants' Application for Dispute Resolution received by the landlords on August 20, 2018. The landlords filed an Application for Dispute Resolution on August 24, 2018 to retain the security deposit in satisfaction of damages, therefore, I find that the landlords have met the requirements under section 38 of the *Act* and as such, the tenants are not entitled to the doubling provisions.

The landlords have requested to retain the \$1,500.00 security deposit in satisfaction of the claims for loss of rental revenue and damages. No interest is payable on the deposit during the period of this tenancy.

I have found that the landlords are entitled to a monetary award for compensation for loss of rental revenue and damages of \$3,262.48, and because this amount exceeds the amount of the security deposit held by the landlords, I have applied the offsetting provisions of section 72 of the *Act*.

I set-off the \$3,262.48 of compensation owed by the tenants to the landlords, against the tenant's \$1,500.00 security deposit held by the landlord.

As the landlords were partially successful in their claim, they are entitled to recover a portion of their filing fee from the tenants in the amount of \$50.

As such, I issue a Monetary Order in the landlords' favour in the amount of \$1,812.48, as explained in the following breakdown:

Item	Amount
Monetary Award to landlords for compensation (loss of rental revenue and damages)	\$3,262.48
Landlords partial recovery of the filing fee from tenants	\$50.00
LESS: security deposit currently held by landlords	(\$1,500.00)
Total Monetary Order in Favour of Landlords	\$1,812.48

The tenants' application for the return of the security deposit is dismissed as the security deposit has been applied against the cost of compensation owed by the tenants to the landlords.

The tenants were not successful in their claim, therefore they must bear the cost of their own filing fee.

Conclusion

I grant a Monetary Order in favour of the landlords in the amount of \$1,812.48 in satisfaction of compensation for lost rental revenue, damages and recovery of a portion of the filing fee.

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 tenants' application is dismissed in its entirety.

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: December 27, 2018

Residential Tenancy Branch