



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF / MNSD FF

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 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.

Tenants:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;

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. The parties confirmed service of the respective applications and evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for loss or damage?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a return of all or a portion of the security deposit?

Is the tenant entitled to recover the filing fee from the landlord?

Background & Evidence

The tenancy began on July 15, 2018 with a monthly rent of \$1785.00 payable on the 1st day of each month. The tenancy was for a one year fixed term lease set to expire on June 30, 2019. The tenant paid a security deposit of \$862.00 at the start of the tenancy which the landlord continues to hold. On October 3, 2018 the tenant notified the landlord by e-mail that he was going to vacate the rental unit on October 15, 2018. The tenant vacated on this date. On October 16, 2018, the tenant provided a forwarding address to the landlord by text message.

The landlord is claiming loss of rent for the month of November 2018 in the amount of \$1785.00. The landlord testified that due to the short notice they were unable to re-rent the unit until December 1, 2018. The landlord testified that they started advertising the unit for rent in the middle of October 2018 and secured a new tenant in the second week of November 2018 for a move-in date of December 1, 2018. The landlord testified they even tried to work with the tenant in offering him a different unit and the option of trying to sublet his lease.

The landlord is also claiming \$1000.00 as a penalty for the tenant breaking the lease.

The tenant testified that he broke the lease due to constant noise from a nearby train. The tenant argues that he paid the rent for the entire month of October 2018 even though he vacated on October 15, 2018. The tenant argues this should have provided the landlord with sufficient time to re-rent the unit. The tenant is claiming the landlord should return his security deposit.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

I find the tenant has failed to establish that the tenancy was ended due to a material breach of the tenancy agreement. I find the landlord suffered a loss as a result of the tenant breaking the lease. I find the landlord mitigated its losses by advertising the rental unit within a reasonable time after receiving notice from the tenant and securing a

new tenancy beginning December 1, 2018. I find it reasonable that the landlord was not able to secure a suitable tenant by November 1, 2018 due to the inadequate notice provided by the tenant. The fact that the tenant paid rent for the full month of October 2018 does not take away from the landlord's loss suffered for November 2018. The landlord is awarded **\$1785.00** in loss of rent as claimed.

The landlord's claim for a penalty for breaking the lease is denied. The tenancy agreement does not provide for any such penalty and the landlord has been compensated for the loss or rent as a result of the tenant's breach.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenants.

The landlord continues to hold a security deposit in the amount of \$862.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Total entitlement for Landlord: \$1023.00 (\$1785.00 + \$100.00 – \$862.00)

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.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act. The tenant only provided a forwarding address by text message. As the tenant did not provided the landlord with a forwarding address in writing as required under the Act, there was no obligation on the landlord to return the deposit prior to the filing of these applications.

As the landlord has been permitted to retain the tenants' security deposit in partial satisfaction of the monetary award granted to the landlord, the tenants' claim for return of the security deposit is dismissed. The tenant is not entitled to recover the filing fee paid for his application.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1023.00**. Should the tenant 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: February 28, 2019

Residential Tenancy Branch