



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL
 MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on October 21, 2018. The Landlord applied for an monetary order for losses due to the tenancy, to recover unpaid rent, permission to retain the security deposit, and to recover her filing fee. The Tenants’ Application for Dispute Resolution was made on November 2, 2018. The Tenants applied for an monetary order for losses due to the tenancy, for the return of their security deposit and the return of their filing fee.

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to monetary for unpaid rent?

- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to monetary compensation for damages under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants testified that the tenancy began on May 1, 2018, as a three-month fixed term tenancy. The parties agreed that rent in the amount of \$1595.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenants paid a \$797.50 security deposit. The Landlord testified that she purchased the rental property during the summer of 2018 and took possession on September 15, 2018. The Landlord provided a copy of the tenancy agreement and the move-in and move-out inspection into documentary evidence. The Tenants testified that they were not present for the move-in inspection, and that the previous owner had conducted that inspection on her own.

Both parties also testified that the Tenants issued a notice to end their tenancy on September 15, 2018, and had completed moving their personal belongings out of the rental unit as of October 15, 2018. Both parties agreed that the Tenants had paid half a month's rent for October 2018, in the amount of \$797.50, and that the Tenants provided their forwarding address to the Landlord during the move-out inspection.

The Landlord testified that she started looking for a new renter as soon as she received the Tenants notice to end their tenancy and was able to find a new renter to take over the rental unit for November 1, 2018. The Landlord is requesting \$797.50 in the recovery of her lost rental income for the second half of October 2018, as the Tenants did not provide sufficient notice to end their tenancy.

The Tenants testified that they had provided sufficient notice to end their tenancy, that they were on a month to month tenancy and that they do not owe the rent for the second half of October 2018.

Additionally, the Tenants testified that they had to move out of the rental unit on October 5, 2018, due to a carbon dioxide leak in the rental unit. The Tenants testified that at 5:00 a.m. on October 5, 2018, the carbon dioxide detector went off in their rental unit. The Tenants testified that the local fire department attended the rental unit and issued an

order telling them that they must vacate the rental unit due to high carbon dioxide levels. The Tenants submitted a copy of the order from the local fire department, ordering them to vacate the rental unit, into documentary evidence.

The Tenants testified that they called the Landlord and advised her of the situation and that the Landlord had put them up in a hotel for the evening of October 5, 2018. The Landlord agreed that there was a carbon dioxide leak in the rental unit and that the Tenants were put up in a hotel on October 5, 2018, due to the order to vacate. The Landlord confirmed that she paid for the hotel for one night.

The Tenants testified that the Landlord had verbally advised them that the furnace would not be repaired until October 17, 2018, and that they were not comfortable to move back in until the furnace had been repaired. The Tenants testified that since the leak would not be repaired before their planned move-out date, of October 15, 2018, they decide to move in to their new place early, on October 7, 2018. The Tenants are seeking to recover their rent paid for the period between October 6 to 15, 2018, in the amount of \$514.52.

The Landlord testified that she had the gas company attend the rental unit the next day and that no problems had been detected. The Landlord testified that the gas company had given her the all clear and that she had a new carbon dioxide detector installed. The Landlord testified that she had verbally advised the Tenants that they could return to the rental unit on October 6, 2018. The Landlord testified that since she put the Tenants up in a hotel for the one day that they had been ordered out by the fire department, she should not have to return the rent.

The Tenants testified that they feel an official report should have been provided to them confirming that it was safe to sleep in the rental unit and that the order from the fire department has been rescinded. The Tenants testified that they did not feel safe going into the rental unit for an extended period and would not allow their children to sleep in the rental unit based in just a verbal from the Landlord. The Tenants testified that an official document should have been provided to them that would have cancelled the order to vacate issued by the local fire department.

The Landlord testified that no official recorded was provided to her from the gas company, that stated that rental unit was cleared. The Landlord also testified that she has tenants currently living in the rental unit right, and there has been no further carbon dioxide leak detected since the incident on October 5, 2018.

During the hearing, the Landlord was asked to provide a breakdown of the \$435.91 that she had claimed for in damage to the rental unit, as the Landlord had not included a monetary worksheet with her application. The Landlord was unable to provide a verbal breakdown, or an explanation for the amount claimed. The Landlord was provided additional time, during the hearing, to provide the breakdown of her claim. However, by the end of these proceedings the Landlord was still unable to confidently testify to the details of this portion of her claim.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed upon testimony of these parties that the Tenants served the Landlord with written notice to end their tenancy on September 15, 2018, and that the Tenants moved out of the rental unit as of October 15, 2018. I also accept the agreed upon testimony of these parties that the Tenants had paid the Landlord half a month's rent for the period of October 1 to 15, 2018.

Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

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

In this case, I find that the Landlord received the Tenants notice to end the tenancy on September 15, 2018. Based on when the Landlord received the Tenants' notice, I find that this tenancy could not have ended, in accordance with the *Act*, before October 31, 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against

another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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 find that the Tenants were in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. I accept the Landlord's testimony that she attempted to rent the unit as soon as possible and was able to find a new renter for the rental unit as of November 1, 2018. I also accept that the Landlord suffered a loss of rental income for half a month's rent for October 2018. Therefore, I find the Landlord has established an entitlement for the recovery of her loss of rental income for October 2018, in the amount of **\$797.50**.

Additionally, the Landlord has claimed for \$435.91 in damages to the rental unit. During the hearing, the Landlord was unable to testify to the details regarding this portion of her claim, even after she had been given additional time during the hearing to prepare her response. The parties to this disputed were advised during the hearing that this portion of the Landlord claim was dismissed, due to the Landlord not being prepared to testify to the detail of this part of her claim during these proceedings.

The Tenants have claimed for the recovery of their rent for the portion of time that they were not able to reside in the rental unit due to the carbon dioxide leak. I accept the agreed upon testimony of these parties, and the documentary evidence from the local fire department, that the Tenants were ordered out of the rental unit on October 5, 2018, due to high levels of carbon dioxide in the rental unit. I also accept the testimony of the Tenants that they were uncomfortable to move back into the rental unit, without

something official saying the leak had been professionally assessed and that it was safe to move back in. I find that it was unreasonable of the Landlord to expect the Tenants to move back into the rental unit based on a verbal conversation with the Landlord, after they had been officially ordered out by the local fire department.

I find that it was reasonable, of the Tenants, to expect an official report regarding the current carbon dioxide conditions in the rental unit, and a document showing that the order to vacate, issued by the local fire department had been had been rescinded, before they would be willing to move back in to the rental unit.

In the absence of any documentation showing that the order to vacate the rental unit issued by the local fire department, had been rescinded, I find that the Tenants were not able to live in the rental unit as of October 5, 2018, and that they suffered a loss due to this. I also find that the Tenants took reasonable steps to mitigate their losses by moving into their new home early.

I accept the agreed upon testimony of the parties that the Landlord had put the Tenants up in a hotel for October 5, 2018, and that the Tenants had only paid for 15 days' worth of rent in October 2018. Therefore, I find that the Tenants are entitled to the recovery of their rent from October 6, 2018, to October 15, 2018, the period for which the Tenants had paid their rent but were unable to live in the rental unit. Therefore, I award the Tenants \$514.52; consisting of a per diem rate of \$51.45 per day for ten days.

Monthly Rent	\$1,595.00
Days in Month	31
Daily Rate	\$51.45
Day to be refunded	10
Rent Refund	\$514.52
Total due	\$514.52

As for the Tenants claim for the return of double their security deposit. Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on October 15, 2018, the agreed upon date the Tenants finished moving their personal belongings out of the rental unit and that the Tenants provided the Landlord with their written forwarding address. Accordingly, the Landlord had until October 30, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application, and I find that the Landlord submitted her Application for Dispute resolution to claim against the deposit on October 21, 2018, within the legislated timeline. Therefore, the Landlord was within her rights to retain the security deposit pending the results of this hearing and that the doubling provision does not apply in this case.

Overall, I grant the Tenants a Monetary Order in the amount of **\$514.52**; consisting of \$514.52 in rent recovery from October 6, 2018 to October 15, 2018, less the \$797.50 awarded to the Landlord for the unpaid rent for October 2018, plus \$797.50 in the return of the security deposit.

October 2018 Rent	\$1,595.00
Tenants Paid	-\$797.50
The remainder of rent awarded to Landlord	\$797.50
Rent recovery awarded to Tenants	-\$514.52
Remainder due to Landlord	\$282.98
Less Security Deposit held by Landlord	-\$797.50
Return Remaining of Security Deposit to Tenants	-\$514.52

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As both the Landlord and the Tenants have been partially successful in their applications, I find that neither the Landlord or the Tenants are entitled to recover their respective \$100.00 filing fees.

Conclusion

I grant the Tenants a **Monetary Order** in the amount of **\$514.52**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. 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: February 27, 2019

Residential Tenancy Branch