



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenant: MNSD
Landlord: MNR-S FFL

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. **The tenant** filed their application November 16, 2018 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit (\$1000.00)- Section 38

The landlord filed their application December 21, 2018 for Orders as follows;

1. A monetary Order for loss of rent revenue for November 2018 – Section 67
2. An Order to keep the security deposit as set off – Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute to no avail, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The parties each acknowledged receiving the application and all evidence of the other as submitted to this proceeding.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Is the landlord entitled to the monetary amounts claimed for loss of revenue and recovery of the filing fee?

Background and Evidence

The undisputed evidence in this matter is as follows. The subject tenancy began December 01, 2017 as a written fixed-term tenancy agreement with an effective end

date of December 31, 2018. The tenancy ended October 31, 2018 when the tenant vacated.

The hearing had benefit of the written Tenancy Agreement. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1000.00 which the landlord retains in trust. During the tenancy the payable monthly rent was \$2000.00 due in advance on the first day of each month.

The parties agree there was a mutual *move in* condition inspection conducted by the parties at the start of the tenancy and a mutual *move out* condition inspection conducted by the parties October 31, 2018, the latter attended by the tenant and the landlord with the landlord's friend, Peter. Both parties each testified that after the condition inspection of October 31, 2018 they both agreed the rental unit was left clean, undamaged and in "very good" condition.

It is undisputed that in August 2018 the parties had a conversation in which they mutually agreed the tenant could move out earlier than the fixed term end date; and that the tenant would begin searching for other accommodations. They agreed the tenant would subsequently notify the landlord of their move out date via a tenant's Notice to vacate.

The tenant testified they notified the landlord by written Notice on October 4, 2018 they were vacating October 31, 2018. The tenant testified they left the Notice taped to the landlord's front door jamb on October 04, 2018 as required by the Act. The tenant testified they provided the landlord with copy of the Notice on October 31, 2018. A copy of the tenant's Notice to vacate was not submitted into evidence, nor was proof of its provision on the landlord by the tenant. The landlord testified they did not receive the claimed tenant's Notice of October 04, 2018, and were unaware of the tenant's moving before attending the rental unit on October 31, 2018.

It is undisputed that on October 30th the tenant notified the landlord to attend the rental unit to do an inspection of the unit the following day. The parties conducted the inspection and discussed the security deposit without agreement as to its disposition. The tenant and landlord agreed that the landlord did not advertise the rental unit's availability for rent until October 31 and November 01, 2018. The landlord testified they were unable to re-rent the unit for November 2018.

The tenant acknowledged not providing the landlord with their written forwarding address *prior* to placing it on their Application for Dispute Resolution, with which the landlord agreed to first knowing of the tenant's forwarding address.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

It must be known that a tenant's deposit is always the property of the tenant and they are presumed entitled to its full return unless they agree for it or a portion to be kept by the landlord, or it is administered by an Order of an Arbitrator under the Act.

I find that the tenancy ended October 31, 2018. I find the tenant's evidence is that they did not provide the landlord with a forwarding address prior to their Application in this matter. I find that **Section 38** of the Act does not require the landlord to do anything with a tenant's deposit until they receive the tenant's forwarding address in writing and that placing it in an Application for Dispute Resolution is not retroactively recognized as providing the forwarding address "in writing". Therefore, I find the tenant's application was, in the least, premature, and the *doubling* provisions afforded by **Section 38** of the Act do not apply.

Landlord's claim

I find that a tenant who signs a fixed term tenancy agreement / contract is responsible for the rent to the end of the fixed term. In addition, the landlord's claim for any loss of revenue is subject to their statutory duty pursuant to **Section 7(2)** of the Act to do whatever is *reasonable* to minimize the loss. I accept the parties agreed the tenancy could end earlier than originally contracted with requisite Notice by the tenant pursuant to **Section 45** of the Act. However, in this matter the parties are in contrast as to whether the tenant notified the landlord they were vacating pursuant to Section 45. The onus was on the tenant to provide proof they served / gave the landlord legal Notice as to when they were vacating, and I find the tenant did not provide sufficient evidence to satisfy me they did so. As a result, I prefer the evidence of the landlord that they first learned of the tenant's departure from the rental unit in late October, 2018. I am satisfied by the oral evidence of both parties the landlord began advertising for a new tenant immediately thereafter as soon as October 31, 2018. I find that under the pressing circumstances, given the lack of timely (legal) Notice by the tenant, the

landlord made a reasonable effort as was possible to mitigate losses but was unable to re-rent the unit for November, 2018. As a result I find the landlord has established entitlement to loss of rent revenue for November 2018 in the payable monthly rent amount of \$2000.00. I further find the landlord is entitled to recover their filing fee of \$100.00, for a total award of **\$2100.00**. In light of the landlord's success in their cross application the security deposit will simply be off-set from their award made herein.

As a result of all the above the tenant's application is effectively rendered **dismissed**.

Calculation for monetary order is as follows,

Landlord's total award inclusive of filing fee	\$2100.00
<i>Minus security deposit held in trust</i>	<i>-\$1000.00</i>
Monetary Order / landlord	\$1100.00

Conclusion

The tenant's application is dismissed. The landlord's application is granted.

I Order the landlord to retain the security deposit of \$1000.00 in partial satisfaction of their claim, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the balance in the amount of **\$1100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: March 20, 2019

Residential Tenancy Branch