



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application from the tenants under the *Residential Tenancy Act* (the *Act*). The tenants' applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence on May 27, 2019 by leaving it "wedged between the door and the doorframe". The landlord disputed this arguing that the package was received via Canada Post Registered Mail on either May 27 or 28th of 2019. Neither party raised any other service issues. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence. The landlord stated that all of her evidence submissions were unrelated to the tenants' monetary claims. I accept the evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

During the hearing the tenants' application was discussed as part of it is also impacted by an application filed by the landlord (the Residential Tenancy Branch File Number is noted on the cover of this decision). In the landlord's application the landlord seeks a monetary claim of \$1,200.00 and to be authorized to retain all or part of the security and pet damage deposits to offset that claim. That application was filed on January 30, 2019 and originally scheduled for May 17, 2019. Due to technical difficulties the hearing was re-scheduled for July 5, 2019 to this Arbitrator. Due to the outstanding application

filed by the landlord, I find that a finding on the tenants request for return of double the security and pet damage deposits cannot be made at this time. As such, I reserve judgement on this issue and defer it until after the conclusion of the landlord's hearing scheduled on July 5, 2019. The remaining portions of the tenants' claim shall be addressed in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 1, 2018 as per the submitted copy of the signed tenancy agreement dated August 26, 2018. The monthly rent is \$2,500.00 payable on the 1st day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$200.00 were paid on August 26, 2018.

The tenants seek an amended monetary claim of \$3,750.00 which consists of:

\$2,500.00	Compensation, 2 Month Notice, Sec. 51
\$1,250.00	Compensation, Return of ½ Month Rent, January 15-31

Both parties confirmed the landlord served the tenants with a 2 month notice for landlord's use dated January 1, 2019 with an effective end of tenancy date of March 1, 2019. The landlord argued that the tenant "refused to accept it". Both parties confirmed the tenants served the landlord with a 10 Day written notice to end tenancy on January 4, 2019. The tenants stated that they had vacated the rental unit on January 14, 2019, but that due to scheduling conflicts with the landlord were not able to meet the landlord for the condition inspection report for the move-out with the landlord until January 22, 2019. The landlord confirmed that the move-out inspection and the keys were returned on January 22, 2019 but argued that the tenants were not out until January 15, 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of both parties and find that the tenants have established a claim for compensation of \$2,500.00 in complying with the landlord's 2 month notice as per section 51 of the *Act*. Although the landlord argued that the "tenant did not accept it", the landlord confirmed that she issued and served the 2 month notice and that the tenant did provide 10 Days' Notice to End the tenancy on January 4, 2019. I find as the landlord to not rescind the 2 month notice it was served and accepted. The tenants' are entitled to compensation of \$2,500.00.

As such, I also find that the tenant provided notice under section 50 of the *Act* by giving 10 days written notice to end the tenancy that is earlier than the effective date of the landlord's notice, the tenants having paid the rent to the landlord, the landlord must refund any rent paid for a period after the effective date of the tenant's notice. The tenants' are entitled to recovery of rent paid for \$1,250.00.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$3,850.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: June 21, 2019

Residential Tenancy Branch