



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION
KOOTENAYS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation for loss under the *Act* 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*.

The landlord's agent attended on behalf of the housing association landlord at the date and time set for the hearing of this matter, and is herein referred to as "the landlord". The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:55 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing.

The landlord testified that the tenant was served with the notice of this hearing and evidence by Canada Post registered mail on June 11, 2019 to the forwarding address provided by the tenant, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision.

The landlord was unable to confirm whether or not the package had been delivered to the tenant, therefore, during the hearing, I accessed the Canada Post website to review the registered mail tracking report. The tracking report indicated that the package had been delivered and signed for as received on June 14, 2019.

As such, I find that the tenant was served with the documents for this hearing on June 14, 2019 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

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

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

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 documentary evidence by the landlord. The landlord confirmed the tenancy began February 1, 2013 as a month-to-month, meaning periodic, tenancy. At the end of the tenancy, monthly rent of \$375.00 was payable on the first of the month. The tenant paid a security deposit of \$335.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord provided the following testimony pertaining to their claim:

- In mid-May 2019, the tenant provided notice to the landlord in writing that she was ending the tenancy, with a move-out date of May 31, 2019.
- The tenant's forwarding address was received by the landlord on May 31, 2019 during the move-out condition inspection.
- The tenant did not authorize the landlord to withhold all or part of the security deposit.
- The rental unit was re-rented after the first week of June 2019.

In support of the landlord's testimony, a copy of the tenant's written notice to end tenancy dated May 15, 2019 was submitted into documentary evidence, along with a copy of the move-in and move-out condition inspection reports and the security deposit form with the tenant's forwarding address noted.

The landlord filed an Application for Dispute Resolution on June 4, 2019 to retain all of the tenant's security deposit in satisfaction of the landlord's monetary claim on the basis that the tenant failed to provide one month's notice as required by the tenancy agreement and the *Act*.

Analysis

Under the *Act*, 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. The amount arrived at must be for compensation only, and must not include any punitive element.

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

In this case, the landlord has claimed for compensation in the amount of the security deposit due to the tenant ending a periodic tenancy prior to the scheduled end date in the tenancy agreement.

Based on the testimony and the tenancy agreement submitted into documentary evidence, I find that the landlord and tenant had a periodic tenancy with rent payable on the first day of each month per the terms of the tenancy agreement.

Section 45(1) of the *Act* sets out how a tenant may end a periodic tenancy:

- 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.

This means that if a tenant's rent was payable on the first of the month, it requires that a notice to end tenancy be given prior to that day, which would be no later than the 30^h or the 31st of the month (or the 28th or 29th in the case of February), and that the date the tenancy ends is at least one month after the date the landlord receives the notice.

Section 45(4) of the *Act* requires that the notice must comply with section 52 of the *Act* in terms of the form and content of the notice to end tenancy.

Section 52 of the *Act* explains the requirements for giving notice to the other party to end a tenancy, and provides the following, in part:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,...

In this case, the tenant provided the landlord with written notice to end tenancy on May 15, 2019, which was dated as received by the landlord on May 16, 2019. I find that the notice was compliant with the requirements of section 52 of the *Act*.

Given that I have found that the tenant gave written notice to end the tenancy on May 15, 2019, and given that the tenant provided May 31, 2019 as the effective date to end the tenancy, the tenant did not provide the landlord with at least one month between the time the landlord received the notice and the tenant's end date of the tenancy, in contravention of section 45(1) of the *Act*.

Therefore, I find that the tenant failed to give notice to end the tenancy in compliance with the *Act*, and as a result the landlord experienced a monetary loss.

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 providing short notice to end a tenancy, as follows:

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 landlord testified that the rental unit was re-rented after the first week of June 2019.

As the landlord is seeking a monetary claim in this matter, the landlord bears the burden of proof, on a balance of probabilities to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

Given that the landlord was able to re-rent the rental unit within a week after it became vacant, I find that the landlord took reasonable efforts to mitigate their loss by finding a new tenant to move in after the effective date of the tenant's notice.

In summary, based on the documentary evidence and testimony provided, I find that the landlord has shown on a balance of probabilities that a loss of one week's rent in the amount of

\$87.50 [\$375.00 / 30 day in the month of June X 7 days] was incurred as a result of the tenant's non-compliance with the terms of the tenancy agreement and the *Act*. Accordingly, I find that the landlord is entitled to a monetary award in the landlord's favour for that amount.

The landlord is seeking to retain the tenant's security deposit in satisfaction of this monetary claim. As such, I must first determine if either party extinguished their rights to the security deposit.

Both parties participated in conducting condition inspections of the rental unit at move-in and move-out, and a report was provided, as required by sections 23 and 35 of the *Act*. Therefore, I find that neither party has extinguished their rights to the deposits pursuant to sections 24 and 36 of the *Act*. As such, I must make a determination based on the provisions of section 38 of the *Act*.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit pursuant to section 38(6) of the *Act*.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing. In this case, the landlord received the tenant's forwarding address in writing on May 31, 2019, the same date that the tenancy ended.

Therefore, I find that the landlord had 15 days from the end of the tenancy on May 31, 2019 to file an Application for Dispute Resolution seeking to claim against the tenant's security deposit. As the landlord's application was filed on June 4, 2019, which is within 15 days of the end of the tenancy, I find that the landlord complied with section 38(1) of the *Act* and is entitled to claim against the tenant's security deposit.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

As I have found the landlord is entitled to a monetary award in the amount of \$87.50 and the recovery of the \$100.00 filing fee, I allow the landlord to retain \$187.50 of the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour, and I order that the

landlord return to the tenant forthwith the remainder of the security deposit of \$147.50 in accordance with sections 38 and 67, and the offsetting provisions of section 72 of the *Act*.

Conclusion

I allow the landlord to retain \$187.50 of the security deposit in full satisfaction of the landlord's claim, and I order the landlord to return forthwith to the tenant the remainder of the security deposit of \$147.50.

Therefore, I grant a Monetary Order in favour of the tenant in the amount of \$147.50.

The tenant is provided with this Order in the above terms and is required to serve this Order on the landlord 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, where it will be 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: September 17, 2019

Residential Tenancy Branch