



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for monetary compensation and/or compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords and one Tenant were present for the hearing. The Tenant also had a witness who joined during the hearing to present testimony and answer questions from both parties. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package, a copy of the Landlord’s evidence, and the amendment form increasing the Landlords’ monetary claim.

The Tenant submitted evidence to the Residential Tenancy Branch the day before the hearing and served the Landlords a within a day of the hearing as well. Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* requires that the respondent’s evidence is served to the Residential Tenancy Branch and the applicant at least 7 days prior to the hearing. As this Tenant’s evidence was served less than 7 days prior to the hearing, the evidence is not accepted and will not be considered in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlords filed the Application for Dispute Resolution for monetary compensation and/or compensation for damages, as well as compensation for unpaid rent. However, through the evidence submitted and the testimony of the Landlords it was evident that their monetary claims were for unpaid rent only, as well as the recovery of the filing fee. As such, pursuant to Section 64(3)(c) of the *Act*, I amend the application to remove the claim for monetary compensation and/or compensation for damages. This decision will address the Landlords' claim for unpaid rent and the recovery of the filing fee.

Issues to be Decided

Are the Landlords entitled to compensation for unpaid rent?

Should the Landlords be authorized to retain the security deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on April 1, 2019 although both parties agreed that the Tenant moved in on March 31, 2019. The second Tenant was to move in at a later date. Rent in the amount of \$1,350.00 was due on the first day of each month and a security deposit of \$675.00 was paid at the start of the tenancy. The tenancy agreement was signed for a fixed term of one year. The Tenant moved out on May 1, 2019.

The Landlords have applied for compensation in the amount of \$2,050.00 which they stated is the remainder of rent owing for April 2019 and rent for May 2019. They stated that they offered the rental unit at \$1,350.00 as there were renovations being conducted in the rental unit that they were working on. They stated that the renovations were superficial and that the unit was still liveable. Although they had plans to complete the work sooner, they noted that due to undergoing surgery they were delayed in finishing the work.

The Landlord provided testimony that they had notified the Tenant of the work they intended to complete, but this was done verbally and there was no contract in writing regarding this.

They stated that on April 22, 2019 the Tenant provided them verbal notice that he could not live there any more as the work was not being completed fast enough. The Tenant moved out on May 1, 2019. The Landlords submitted that they began advertising the rental unit right away and were able to re-rent it for May 15, 2019 for less rent than the Tenant was paying. They noted that they would accept 1.5 months of rent instead of 2 as a result of being able to find new tenants during May 2019. They noted that it was difficult to find someone for May 1, 2019 as the Tenant's belongings were still in the rental unit as of this date and due to the short notice provided.

The Landlords stated that on April 3, 2019 they received \$650.00 from the Tenant towards April 2019 but that they did not receive any further rent for April or May 2019.

The Landlords confirmed receipt of the Tenant's forwarding address on May 10, 2019.

The Tenant testified that he signed the tenancy agreement on March 10, 2019 and was aware of the condition of the rental unit at that time. However, he stated that he was told that the work would be completed by the time he moved in. The Tenant stated that when he moved in, the rental unit was in the same poor condition, other than some garbage that had been cleaned up. The Tenant stated that this included no toilet, showerhead or flooring tiles in one of the bathrooms, a dishwasher in one of the bedrooms, and an unhinged door.

The Tenant agreed that he paid \$650.00 for April 2019 and stated that he was not paying for an unfinished space. The Tenant submitted that the terms of the tenancy agreement had changed, thus voiding the agreement. He was in agreement that he provided verbal notice to end the tenancy on April 22, 2019 and that he moved out on May 1, 2019. The Tenant stated that due to the condition of the rental unit, he had every right to end the tenancy and move out.

The Tenant's witness stated that the Tenant contacted him around April 1, 2019 regarding renting his travel trailer due to the condition of the rental unit he was moving into. The witness stated that the Tenant was paying rent for the trailer as of April 1, 2019.

The Tenant also stated his position that the Landlords did not have a right to retain the security deposit due to not conducting a move-in or move-out inspection. The Landlords disputed this and stated that the Tenant opted out of participating in the inspections which they completed and provided him a copy of.

Analysis

I accept the evidence before me that the parties entered into a fixed term tenancy set to begin on April 1, 2019. The parties were not in agreement as to the work that was being completed in the rental unit at the time the tenancy agreement was signed. The Landlords stated that the work was superficial while the Tenant stated that it was significant and meant he lost access to areas of the rental unit.

However, I do not find sufficient evidence before me to establish that the completion of the work was a term of the tenancy agreement. Instead, it seems that the parties had a verbal agreement regarding completion of the work but that the tenancy agreement was signed regardless of the work being completed. As such, I find that the Tenant was aware of the condition of the rental unit when signing the tenancy agreement and that no written contract was drafted regarding the tenancy being dependent on the completion of this work by a certain date. I also note that I do not find sufficient evidence before me to establish the condition of the rental unit or to establish the extent of the work being completed in the unit.

Therefore, although there were delays in the work being completed that was likely disruptive and frustrating, the Tenant entered into a legal fixed term tenancy agreement set to begin on April 1, 2019. I also find that the Tenant had remedies under the *Act* to apply for a rent reduction or request the completion of repairs while continuing in the fixed term tenancy agreement.

As stated in Section 45(2) of the *Act*, to end a fixed term tenancy, a tenant must provide at least one month notice to end the tenancy no earlier than the date the fixed term ends as stated in the tenancy agreement. As such, by ending the tenancy prior to March 31, 2020, I find that the Tenant was in breach of Section 45 of the *Act*.

As stated in Section 7 of the *Act*, when a party does not comply with the *Act*, the other party must be compensated for any losses that occur as a result. Section 7 also states that a party claiming a loss must take reasonable steps to mitigate their loss. I accept the testimony of the Landlords that they advertised the rental unit right away and were

able to find new tenants for May 15, 2019. I also find that it would have been difficult to find a new tenant for May 1, 2019 when the Tenant moved out on May 1, 2019 and also with the short notice provided.

As such, I find that the Tenant owes rent for May 2019 as due on May 1, 2019. I also accept the testimony of both parties that the Tenant paid \$650.00 for rent for April 2019. I also do not find evidence before me that the Tenant had the right to withhold the remainder of rent for April 2019 in accordance with the *Act*. Accordingly, I find that the Tenant owed the full rent amount as due on April 1, 2019 as stated in the tenancy agreement and as required by Section 26 of the *Act*.

Therefore, I find that the Landlords have established their claim for the remainder of April 2019 rent in the amount of \$700.00 and for half of May 2019 rent in the amount of \$675.00. I accept the testimony of the Landlords that they did not lose a full month of rent for May 2019 and therefore would accept compensation for half of May 2019 rent only.

Regarding the security deposit, the parties were in agreement that the tenancy ended on May 1, 2019 and the Tenant's forwarding address was provided on May 10, 2019. As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposit or file a claim against it. As the Landlords filed the Application for Dispute Resolution on May 24, 2019, I find that they were in compliance with Section 38(1) and therefore do not owe the Tenant double pursuant to Section 38(6) of the *Act*. The Landlords may retain the security deposit towards the compensation owed.

I also note that although the Tenant stated that the Landlords did not have a right to retain the security deposit as no inspections were conducted, I do not find this to be the case. Regardless of what occurred with the inspections, as the Landlords were claiming for unpaid rent only and not damages, they were within their right to retain the deposits and file an Application for Dispute Resolution.

As the Landlords were successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlords are granted a Monetary Order in the amount outlined below:

April 2019 outstanding rent	\$700.00
May 1-May 15, 2019 rent	\$675.00
Recovery of filing fee	\$100.00

<i>Less Security deposit</i>	<i>(\$675.00)</i>
Total owing to Landlord	\$800.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$800.00** as outlined above. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: September 06, 2019

Residential Tenancy Branch