



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, FFL, MNDCL, MNRL

Introduction

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

- return of the security deposit pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for the return of the security deposit pursuant to section 38?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenant testified that she entered an oral tenancy agreement with the landlord on March 28, 2019. The tenant testified that they agreed that the tenancy would start on May 15, 2019 and the monthly rent would be \$1,000.00 per month, due on the first day of each month. She testified that she agreed to pay \$500.00 rent for the month of May 2019. The tenant also testified that she agreed to pay a \$500.00 security deposit. The tenant testified that she paid the \$500.00 security deposit on March 30, 2019.

The tenant testified that the landlord requested an additional \$1,000.00 on April 17, 2019. The tenant testified that the landlord said this was for payment of the last month of rent. The tenant testified that on April 22, 2019 she told the landlord that she would not pay the additional \$1,000.00 and she decided not to rent there since the landlord changed the terms of the agreement.

The tenant testified that she sent the landlord a letter on May 13, 2019 wherein she provided her forwarding address in writing. The tenant submitted a copy of the letter as evidence. The tenant testified that she sent the letter by Xpresspost on May 13, 2019 and she provided the tracking number which is referenced on the first page of the decision. I asked all parties if they had any objections to me checking the tracking number on the Canada Post website and all parties consented. I went to the Canada Post website during the hearing and the website showed that this tracking number

referenced a delivery that was submitted on May 13, 2019 and received on May 16, 2019. The landlord acknowledged he received the letter on May 16, 2019.

The tenant testified that she never moved into the rental unit and the landlord did not return any portion of the security deposit.

The landlord testified that the \$500.00 he received from the tenant was a payment made to hold the rental unit and it was a payment towards the first month rent. The landlord testified that the \$1,000.00 he subsequently requested was for the security deposit. The landlord testified that the tenant told him that she was cancelling the tenancy because she had found another rental unit.

The landlord claims that he lost rent for May 2019 and June 2019 as a result of the tenant cancelling the tenancy agreement. The landlord testified that he advertised the vacancy but he was not able to find a new tenant until July 2019. The landlord testified that he did find a prospective replacement tenant in May 2019 but the tenant did not receive park approval.

A witness for the tenant that the landlord did have another tenant occupying the rental in May 2019 but the tenant vacated the rental unit because of plumbing problems.

Analysis

I will address each of the parties' claims separately.

i. Tenant's Claim for Return of Security Deposit

Section 38 of the *Act* states that:

- 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.

Based on the testimony of the tenant, I find that the tenancy ended on April 22, 2019 when she told the landlord that she was cancelling the rental.

On the basis of the testimony of the undisputed testimony of the tenant and the provided Canada Post tracking information, I find that the tenant provided the landlord with her forwarding address in writing on May 13, 2019. Further, based on the tracking information provided and the landlord's testimony, I find that landlord received the forwarding address on May 16, 2019.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the landlord received the tenant's forwarding address in writing on May 16, 2019, the landlord's deadline to repay the deposit or file an application for dispute resolution was May 31, 2019.

I find that the landlord did not perform either of these requirements by the May 31, 2019. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit.

In addition, since the tenant has been successful in her application, I award the tenant \$100.00 for recovery of the filing fee pursuant to section 72.

ii. Landlord's Claim for Loss of Rent

The landlord seeks compensation for the loss of rent resulting from the tenant's early termination of the tenancy agreement. Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof 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*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In order to obtain compensation for loss of rent, the landlord must take reasonable measures to find a replacement tenant after the tenant notifies the landlord that they are ending the tenancy. I find that the tenant notified the landlord on April 22, 2019 that she was cancelling the tenancy. However, pursuant to *Residential Tenancy Branch Policy Guideline* No. 5, I find the tenant's notice ending the tenancy was not effective until the landlord received the notice in writing on May 16, 2019.

In this matter, I am not satisfied that the landlord has provided sufficient evidence to establish that he has taken reasonable measures to mitigate his loss. The landlord testified that he advertised for a new tenant. However, the landlord did not submit copies of any of his advertisements to corroborate his testimony. Furthermore, the landlord did not provide sufficient evidence to establish that the rental unit was even habitable in May 2019 as a result of plumbing issues.

Accordingly, I find that the landlord has not provided sufficient evidence to establish that he took reasonable measures to mitigate his loss and I dismiss the landlord's request for compensation for loss of rent based upon the tenant's early termination of the tenancy agreement.

Since the landlord has not been successful in his application, I dismiss the landlord's application for recovery of the filing fee pursuant to section 72.

Accordingly, I grant the tenants a monetary award in the amount of \$1,100.00, calculated as set forth below:

Item	Amount
Recovery of double the security deposit (\$500.00 times 2)	\$1,000.00
Filing recovered by tenant	\$100.00
Total award to tenant	\$1,100.00

Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenant reimbursement of the filing fee.

I grant the tenant a monetary order in the amount of **\$1,100.00**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to 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 23, 2019

Residential Tenancy Branch