



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD FFL MNDCL-S MNRL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

EK testified on behalf of the tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications. As the tenant confirmed receipt of the landlords’ evidentiary materials, I find that the landlord’s evidence package was served in accordance with section 88 of the *Act*. The tenant confirmed that they did not serve the landlords with evidentiary materials. Accordingly, the tenant’s written evidence was excluded for this hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy?

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

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This fixed term tenancy began on July 1, 2018 with monthly rent set at \$4,850.00. The landlords collected a security deposit in the amount of \$4,850.00, which they still hold. The tenant does not dispute the fact that this was a fixed term tenancy which was to end on June 30, 2019. The landlords confirmed that the tenants had provided a forwarding address to them, which they received on May 10, 2019.

Both parties confirmed that on December 14, 2019 the sump pump had backed up, flooding the lower floor of the home. The home consists of 3 levels, which are all occupied by the tenant. The tenant stated the following in their application: *"There was the big flooding at the basement and we could not live at this home because of not enough space for my family, noisy, and dirty environment. The restoration company told us that it would take at least 3~4 months to finish the restoration. Therefore, we decided to move out from this home"*.

The tenant testified that they had moved out on a temporary basis on December 22, 2018 due to the disruption caused by the restoration that was taking place. The tenant testified that their intent was to move back once the restoration was completed. The tenant admitted that they had moved out all their personal belongings, some of which were moved into storage. The tenant testified that they had sent an email to the landlords. The tenants are seeking the return of their security deposit.

The landlords testified that they discovered the tenants had moved out on December 22, 2019, but no notice was ever given by the tenant. The landlords testified that they had received no communication from the tenant, and it appeared that the tenant had completely moved out as the tenant had removed all their personal belongings in the entire home. The landlords dispute that the tenant had ever attempted to communicate with them until they had received the tenant's forwarding address in May of 2019. The landlords testified that they are reducing their original claim of \$24,250.00 to \$14,118.89 as their insurance company had covered some of their losses.

The landlords are seeking monetary compensation as follows:

Item	Amount
Loss of Rental Income for April 2019 to June 2019 (3 months x \$4,850.00)	\$14,550.00
Rent Reduction for December 2018	-431.11
Total Monetary Order Requested	\$14,118.89

The landlords testified that they had attempted to re-rent the home until August 2019 despite their efforts to do so. The landlords testified that they had started advertising the home for rent as of February 2019, with no success. The landlords included copies of their online listings to support their efforts to mitigate the losses. The landlords testified that the restoration was complete and the home was ready for occupancy by new renters as of April 1, 2019.

Analysis

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 deposit 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 tenants a monetary award equivalent to the original value of the security deposit (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 this case, I find that the landlords had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. The landlords did not file their Application for Dispute Resolution until August 16, 2019. The tenant's agent gave sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

Although the tenant's testimony is that they had only moved out on a temporary basis, the landlords testified that the tenants had ended the tenancy by moving out on December 22, 2019.

I find that the landlords have met their evidentiary burden on a balance of probabilities that this tenancy had ended on December 22, 2019. Although the tenant's testimony is that they had communicated with the landlord by email that they were only moving out on a temporary basis due to the flood. I do not find the tenant's submissions to be convincing or persuasive. I find the tenant's submissions to be unsupported by evidence. It was undisputed by both parties that the tenants had removed all their personal belongings from the home as of December 22, 2019, and in the tenant's own application they stated that they had decided to move out from this home.

I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No

applications for dispute resolution have been filed by the tenant in regard to this tenancy prior to them moving out.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlords is that they were able to claim some of their losses through their insurance, and are only seeking compensation for the remaining months of the fixed-term tenancy. The landlords had allowed for partial reimbursement of the December 2019 rent due to the flooding.

I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. The landlords are granted a monetary claim of \$14,118.89 for the tenant's failure to comply with section 37(2)(a) of the *Act*.

As both parties were equally successful in their applications and obtained offsetting monetary awards, no order will be made in regards to the recovery of their filing fees.

Conclusion

I find that the tenant is entitled to the return of their security deposit as well as compensation under section 38 of the *Act* for the landlords' failure to comply with the *Act*.

I find that the landlords are entitled to compensation for the tenant's failure to comply with sections 44 and 45 of the *Act*.

As both parties were equally successful in their applications and obtained offsetting monetary awards, no order will be made in regards to the recovery of their filing fees.

I issue a Monetary Order in the amount of \$4,418.89 in the landlords' favour under the following terms:

Item	Amount
Loss of Rental Income for April 2019 to June 2019 (3 months x \$4,850.00)	\$14,550.00
Rent Reduction for December 2018	-431.11
Less Return of Security Deposit	-4,850.00
Less Tenant's Compensation for Landlords' Failure to comply with section	-4,850.00

38 of the <i>Act</i>	
Total Monetary Order	\$4,418.89

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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 25, 2019

Residential Tenancy Branch