



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, MNR-S, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

This hearing 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence. Both parties also confirmed the tenants served the landlord with their notice of hearing package. The tenant, B.F. confirmed that their evidence was not provided to the landlord for the dispute resolution hearing. Neither party raised any other service issues. I find based upon the undisputed testimony of both parties that both parties have been sufficiently served with the notice of hearing

packages for both parties and that the tenant was properly served as per sections 88 and 89 of the Act. On the evidence submissions by the tenant, I find that as the tenant failed to serve the landlord with any documentary evidence that the tenant's documentary evidence is excluded from consideration for lack of service. Both parties were advised that the tenants may make direct testimony submissions on any of the documentary evidence excluded and that the weight of consideration would be made after submissions by both parties are allowed.

At the outset, the landlord's application was clarified. The landlord has named a limited company as the landlord. Discussions with all parties revealed that the named company is an agent of the landlord and not listed on the signed tenancy agreement as the landlord. All parties agreed to remove the named limited company name from the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation, for damage, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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 July 15, 2018 on a fixed term tenancy ending on July 30, 2019 as per the submitted copy of the signed tenancy agreement dated July 12, 2018. The monthly rent was \$1,300.00 payable on the 1st day of each month. A security deposit of \$650.00 was paid on July 15, 2018.

Both parties confirmed that no condition inspection report(s) for the move-in or the move-out were conducted. The landlord confirmed that no offer of a condition section on report for the move-in or the move-out were made. The landlord confirmed the landlord did not serve a Notice of a Final Opportunity to the tenants to conduct a condition inspection report for the move-out.

Both parties confirmed the tenancy ended on June 1, 2019 when the tenant, Q.W. vacated the rental unit.

The landlord seeks a monetary claim of \$1,775.13 which consists of:

\$346.50	wall damage repair/painting
\$128.63	cleaning
\$1,300.00	Loss of Rental Income, June 2019

In addition, the landlord also seeks recovery of the \$100.00 filing fee. The landlord claims that the tenant vacated the rental unit, breaching the fixed term tenancy and leaving it damaged and dirty requiring repairs and cleaning.

The landlord received notice from the tenants to vacate the rental unit ending the tenancy pre-maturely. On June 1, 2019 the tenancy ended and possession was returned to the landlord. The landlord stated that the rental unit was returned with damage to the walls requiring "Extensive Wall Repair" as noted in the invoice submitted by the landlord for \$346.50 dated June 13, 2019. The tenant, Q.W. confirmed that upon vacating the rental premises wall damage requiring repairs was noted by both the landlord and the tenant. The tenant, Q.W. acknowledged that wall damage had occurred during the tenancy but argued that the landlord's costs were inflated. The tenants were unable to provide any details of how or what costs were "inflated". No supporting evidence was offered.

The landlord seeks \$128.63 for cleaning costs as the rental was left dirty requiring cleaning. The landlord has submitted an invoice dated June 7, 2019 for the specified amount and details list it as "move-out cleaning". The landlord has also submitted in support of these claims' photographs showing the rental unit condition at the end of tenancy. The landlord provided undisputed testimony that this was a "brand new" rental unit at the start of the tenancy as a contrast for the condition between the start and end of tenancy. The tenants both confirmed in their testimony that the unit was left dirty requiring cleaning.

The landlord also seeks compensation of \$1,300.00 for the loss of rental income for the month of June 2019. The landlord stated that upon being notified of the tenants' intent to end the tenancy early, the landlord advertised the rental unit and showed it 9 times for a June 1, 2019 start to a tenancy. The landlord stated that initial showings went well, but subsequently access became a problem due to the tenants and the tenant, Q.W. did not vacate the unit until June 1, 2019 at noon. Subsequently, the landlord upon gaining possession, made repairs and cleaned the rental unit. The landlord stated that further advertising for June and July 2019 of 3 showings resulted in the acceptance

of a new tenancy for July 1, 2019 on June 16, 2019. No relevant arguments were made by the tenants.

The tenants seek a monetary claim of \$1,300.00 which is equal to the return of double the security deposit of \$650.00. The tenants also seek recovery of their \$100.00 filing fee.

Both parties confirmed the tenancy ended on June 1, 2019 when the tenant, Q.W. vacated the rental unit. Both parties confirmed the landlord currently holds the tenants' \$650.00 security deposit. The landlord applied for dispute of its return on June 25, 2019. After extensive discussions, both parties agreed that the tenants provided their forwarding address via email on June 12, 2019 for the return of the security deposit which was accepted by the landlord.

The tenants also argued that the landlord has extinguished his right to retain the \$650.00 security deposit as the landlord has failed to complete a condition inspection report for both the move-in or the move-out. The tenants argue that as such, the tenant is entitled to the return of double the security deposit.

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, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord has made claims that the tenant breached the fixed term tenancy by prematurely ending it on June 1, 2019 prior to July 30, 2019 as per the signed tenancy agreement dated July 12, 2018. In this case, the tenants have confirmed that the tenancy had ended pre-maturely on June 1, 2019 after giving notice. The landlords provided undisputed testimony that efforts to minimize any possible losses by advertising the rental unit were made. The landlord provided undisputed testimony that 9 showings were made initially, but that the final 4 were "not showing well" due to the

condition of the rental unit and the landlord's difficulties in arranging access for the showings. After the tenancy ended on June 1, 2019, the landlord made repairs to the wall and repainted them and cleaned the unit. The landlord was successful in re-renting the unit on June 16, 2019 for July 1, 2019 after 3 showings. On this I find that the landlord has established a claim for loss of rental income of \$1,300.00 for June 2019 and the landlord has mitigated any possible losses by making reasonable efforts to re-rent the unit.

On the landlord's claims for wall damage repairs/painting of \$346.50 and \$128.63 for cleaning, I find that the landlord has established these claims. The landlord has provided undisputed testimony; photographic evidence taken at the end of tenancy; the tenants confirmed that the rental unit was left dirty and told by the landlord that it would have to be cleaned up either by the landlord or a contract cleaner. The landlord submitted copies of dated invoices for both items of claim. On this basis, I find that the landlord is entitled to recovery of both these claims.

The landlord has established a total monetary claim of \$1,775.13 and recovery of the \$100.00 filing fee.

The tenants have argued that the landlord has extinguished his right to all or part of a security deposit.

Section 38(5) of the Act states in part,

The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

In this case, the landlord has confirmed that a condition inspection report for the move-in or the move-out were not completed.

Residential Tenancy Act Policy Guideline #29, Security Deposits states in part,

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required¹⁰ (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

The landlord confirmed that no offers to the tenant for the purposes of completing a condition inspection report for the move-out were made. The landlord confirmed that a Notice of a Final Opportunity given to the tenant to schedule a condition inspection report was made. On this basis, I find that the landlord has extinguished his right against the \$650.00 security deposit.

The tenants also seek return of double the security deposit of \$1,300.00 and recovery of the \$100.00 filing fee for total of \$1,400.00.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case, both parties confirmed that the landlord holds the \$650.00 security deposit for which he has extinguished his right to hold. I order that the tenant is entitled to this original amount of \$650.00.

The landlord applied for dispute on June 25, 2019 after receiving the tenants' forwarding address via email on June 12, 2019. Although the landlord applied for dispute for returning the \$650.00 security deposit within the allowed 15 day period (in 13 days), the

landlord failed to meet his statutory obligations and has extinguished his right to file an application to dispute its return. The tenants are also entitled to compensation under section 38 (6) of the Act for an amount equal to the \$650.00.

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

In offsetting these claims, I find that the landlord's claim of \$1,875.13 is offset against the tenants' claim of \$1,400.00 and is entitled to a difference of \$475.13.

Conclusion

The landlord is granted a monetary order for \$475.13.

This order must be served upon the tenants. Should the tenants 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: October 03, 2019

Residential Tenancy Branch