



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The male landlord did not attend this hearing, which lasted approximately 45 minutes. The female landlord ("landlord"), the two tenants, the tenants' lawyer, and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords"). The tenants confirmed that their lawyer and agent had permission to represent them at this hearing.

The tenants' lawyer confirmed receipt of the landlords' application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlords' application and notice of hearing. The landlord confirmed that the landlords did not submit any evidence for this hearing.

The tenants' agent confirmed that the tenants mailed two separate copies of their evidence package to the landlords at the address provided in this application, on November 1, 2019. The tenants provided two Canada Post receipts, tracking numbers, tracking reports, and envelope photographs with the evidence inside them, with their evidence package. The tenants' agent confirmed the two Canada Post tracking numbers verbally during the hearing and stated that the tracking reports indicated that the landlords refused service. The landlord claimed that she did not receive any

evidence from the tenants, and she did not refuse service. The landlord confirmed that the tenants used the correct address for service. In accordance with sections 88 and 90 of the *Act*, I find that both landlords were deemed served with the tenants' evidence package on November 6, 2019, five days after their registered mailings. I notified both parties that I would consider the tenants' evidence at this hearing and in my decision, as the landlords were deemed served with the evidence at the correct address, despite any refusal of service, as per Residential Tenancy Policy Guideline 12.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and ended on July 30, 2019. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlords on July 31, 2019, by way of a letter that was personally handed to the landlord on the same date. The landlords did not have written permission from the tenants to keep any part of their security deposit. The landlords' application to retain the tenants' security deposit was filed on August 1, 2019.

The landlords seek a monetary order of \$1,500.00 plus the \$100.00 application filing fee.

The landlords seek \$1,500.00 for a loss of rent for August 2019. The landlord testified that the tenants did not provide one month's notice to vacate the rental unit, as they verbally told her on July 24, 2019 that they were leaving on July 30, 2019. She claimed

that one tenant moved out in May 2019 and the other left on July 30, 2019. She stated that she told the tenants she would be keeping their security deposit to offset the rent. She said that she re-rented the unit to new tenants on November 1, 2019 for the same rent of \$1,500.00 per month. She confirmed that she did not provide proof of any advertisements or efforts to re-rent the unit but she posted an online advertisement immediately on July 24, 2019, and showed the unit about 14 to 15 times to prospective tenants.

The tenants dispute the landlords' claim for a loss of rent. The tenants' lawyer stated the following facts. She claimed that one of the tenants told the landlord that she would be vacating the unit in May 2019 and the landlord was agreeable. She maintained that the remaining tenant could not afford the rent by herself, so the landlord offered her another unit, but she declined because she could not afford that either. She explained that the tenants told the landlord about five times verbally between May and July 2019, that they would be leaving at the end of July, and the landlord never asked for written notice, objected to them leaving, or notified them about a loss of rent claim. She confirmed that the landlord only completed one showing of the unit in July 2019, while one of the tenants was still residing there. She stated that the landlord offered to return half of the tenants' security deposit to them.

The tenants' agent stated the following facts. The landlords waived their right to claim for a loss of rent because they knew that the tenants were leaving for months, they were given verbal notice and they never asked for written notice. The landlords filed their application on August 1, 2019, before they knew of any rental losses. The landlords have not met the four-part test under section 67 of the *Act*. The tenants provided case law, referencing my ability to implement common law principles of waiver.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for \$1,500.00, without leave to reapply.

I dismiss the landlords' claim for one month's rental loss of \$1,500.00 for August 2019. I find that the landlords failed to provide documentary evidence including copies of rent advertisements, to show when they advertised the unit for re-rental, what the amount of rent was, what details were given, or how long the unit was advertised for. The landlords also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. I find that the landlords failed to show how they mitigated losses in their efforts to re-rent the unit. The landlords also failed to indicate why there was a delay in re-renting the unit until November 1, 2019, when they apparently posted advertisements in July 2019, and supposedly showed the unit about 14 to 15 times.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on July 30, 2019. The tenants provided the landlords with a written forwarding address on July 31, 2019, by way of a letter. The landlords did not return the deposit to the tenants. I find that the landlords filed an application for dispute resolution to claim against the deposit on August 1, 2019, which is within 15 days of the later written forwarding address date of July 31, 2019. Although the landlords' right to claim against the deposit for damages was extinguished as per sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports, the landlords

made a loss of rent claim, not a damages claim. Therefore, I find that the tenants are not entitled to double the value of their deposit of \$750.00.

Over the period of this tenancy, no interest is payable on the tenants' security deposit. I order the landlords to return the deposit of \$750.00 to the tenants within 15 days of receiving this decision. Although the tenants did not file an application for the return of their deposit, I am required to deal with its return on the landlords' application to retain the deposit, as per Residential Tenancy Policy Guideline 17. The tenants are provided with a monetary order for \$750.00.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$750.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(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: November 14, 2019

Residential Tenancy Branch