



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF / MNSD FF

Introduction

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

Landlord:

- a monetary order for damages pursuant to section 67;
- a monetary order 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;
- authorization to recover the filing fee for this application pursuant to section 72.

The tenants had also filed an application which was set to be heard on a different date. The issue identified in the tenants' application overlapped the landlord's application and both parties agreed to hear the application together. The tenant's application is for:

Tenant:

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions.

The parties confirmed service of the respective applications. The landlord acknowledged that she did not serve any of her evidence on the tenants. The landlord's evidence submissions on file were not considered in the making of this decision.

Issues

Is the landlord entitled to a monetary order for damages?
Is the landlord entitled to a monetary order for loss of rent?
Is the landlord entitled to retain all or a portion of the security deposit?
Is the landlord entitled to recover the filing fee for this application?

Are the tenants entitled to a return of all or a portion of the security deposit?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began approximately 2 ½ years ago and ended on June 30, 2019. The monthly rent for the last two months prior to the end of the tenancy was \$1400.00.

The landlord testified the tenants paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold. The tenants argued there was four tenants and they each paid \$175.00 in cash for a total of \$750.00.

The tenants provided a forwarding address to the landlord on July 23, 2019. The landlord's application to retain the deposit was filed on August 2, 2019 within the 15-day timeline provided for under the Act.

The landlord is claiming damages in the amount of \$600.00 for various damage and cleaning expenses. The landlord is also claiming loss of rent in the amount of \$600.00 as the tenants failed to provide sufficient notice to end the tenancy. The landlord submits the tenants provided verbal notice on June 15, 2019 to move out June 30, 2019.

The tenants argue it was the landlord who called them and asked them to move. The tenants confirm they did not receive and written or formal notice to vacate from the landlord.

The landlord testified the tenants were constantly paying rent late and she told them to move if they could not pay rent on time. The landlord testified she did not provide any

date or any written notice for the tenants to vacate. The landlord testified she lost rent for the month of July 2019 and was not able to re-rent the unit until August 1, 2019.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

I find the landlord made this application within 15 days of receipt of a forwarding address.

I find the tenants provided insufficient evidence that they paid a total deposit of \$750.00; therefore, I find the security deposit amount to be \$600.00.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Residential Tenancy Policy Guideline #16 "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The landlord did not provide a copy of its evidence in support of the claim for damages to the tenants. Without this evidence the landlord is not able to support its claim that

damages existed and/or the value of any loss suffered as a result. This part of the landlord's claim is therefore dismissed without leave to reapply.

Section 45(1) of the Act sets out that:

A tenant may end a periodic 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 after the landlord receives the notice, and

(b) is before the day in the month...that rent is payable under the tenancy agreement.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenants vacated the rental unit on June 30, 2019. The tenants must show that either they provided written notice to the landlord as per above or that the landlord issued them a notice to end tenancy. The tenants have not demonstrated either. I accept the landlord's testimony and find the tenants gave insufficient notice to end tenancy which was also not in writing. I find the landlord did not issue any notice for the tenants to vacate other than a general comment that they find new accommodation if they were going to continue to pay rent late.

The tenant provided verbal notice to the landlord on June 15, 2019 to end the tenancy effective June 30, 2019. The earliest possible effective date for the tenants' notice to end this periodic tenancy pursuant to section 45 of the Act would have been July 31, 2019. The tenants did not provide sufficient notice to end the tenancy therefore the landlord suffered a loss of rent for the month of July 2019. Although the rent was \$1400.00 per month the landlord only claimed an amount of \$600.00 as loss of rent. I award the landlord loss of rent in the amount of \$600.00 for the month of July 2019.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$700.00.

The landlord may retain the security deposit of \$600.00 in partial satisfaction of this award. The landlord is granted a monetary order in the balance of \$100.00.

As the landlord has been permitted to retain the security deposit, the tenants' application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord may retain the \$600.00 security deposit.

The tenants' application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. 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: November 14, 2019

Residential Tenancy Branch