



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Recovery of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application and evidence. The tenant said they had not reviewed the landlord's evidence but confirmed they had received it in full. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to a return of the security deposit for this tenancy?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy was scheduled to begin on August 1, 2019. The monthly rent was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was paid by the tenant and is still held by the landlord. A copy of the written tenancy agreement signed by the parties on May 31, 2019 was submitted into evidence. The parties gave evidence that the tenant paid the first month's rent upon signing the tenancy agreement.

Prior to moving into the rental unit the tenant contacted the landlord on July 7, 2019 that they would not be able to take possession of the suite and gave notice to end the tenancy. The tenant subsequently provided their forwarding address to the landlord on July 22, 2019.

As the tenant did not take possession of the rental unit no condition inspection report was prepared. The tenant testified that they have not provided authorization that the landlord may retain any portion of the deposit for this tenancy.

The landlord gave evidence that they were able to mitigate their losses by finding a new occupant to take possession of the rental unit for August 1, 2019, but at a reduced monthly rent of \$2,000.00.

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.

I find that a valid and enforceable tenancy agreement was created between the parties when the written tenancy agreement was signed on May 31, 2019. The terms of the tenancy agreement were that monthly rent in the amount of \$2,200.00 would be payable commencing August 1, 2019.

A tenant must pay rent when it is due, pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord

notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on July 7, 2019 the effective date of the end of tenancy was August 31, 2019. I find that the tenants remained obligated to pay the monthly rent in the amount of \$2,200.00 on August 1, 2019, despite their not physically moving into the rental unit on that date. The tenant had paid the full rent owing and the landlord was entitled to retain that payment. I find that the landlord's action of finding a new occupant to mitigate their own losses is not a breach of the Act, regulations or tenancy agreement that has given rise to any loss on the part of the tenant. Consequently, I dismiss this portion of the tenant's application.

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 a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the evidence of the parties that the tenant had provided a forwarding address to the landlord on July 22, 2019. I accept the undisputed evidence of the landlord that they have not filed any application for authorization to retain the deposit for this tenancy nor have they returned any portion of the deposit to the tenant. I accept the tenant's evidence that they have not given authorization that the landlord may retain any portion of the deposit.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$2,200.00 Monetary Order, double the value of the \$1,100.00 security deposit paid for this tenancy.

As the tenant's application was partially successful I find it appropriate that the tenant may recover \$50.00, a portion of the filing fee for this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,250.00. The landlord must be served with this Order as soon as possible. Should the landlord 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 29, 2019

Residential Tenancy Branch