



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages and unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing as were both Tenants. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenants did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement and notices of rent increase that were submitted into evidence. The tenancy began on February 1, 2012. Rent in the amount of \$1,100.00 was due on the first day of each month. The Tenants paid a security deposit of \$467.50 at the start of the tenancy and of which the Landlord still holds. The parties agreed that the Tenants moved out on August 1, 2019.

The Landlord has claimed compensation in the amount of \$1,635.25, which includes unpaid rent and parking, cleaning costs, and the recovery of the filing fee.

The Landlord testified that they are seeking \$1,100.00 for unpaid rent for August 2019. She stated that the Tenants provided notice on July 22, 2019 that they would be moving out on July 28, 2019. A copy of the Tenants' notice was submitted into evidence and signed by both Tenants. She stated that the Tenants were notified that this was insufficient notice to move out by the end of July 2019 and therefore that the Tenants would owe rent and parking fees for August 2019.

The Landlord submitted into evidence a letter dated July 23, 2019 in which the Landlord notifies that Tenants that they provided an incorrect notice to vacate. The letter states that the Tenants' notice of July 22, 2019 would be effective on August 31, 2019 and therefore the Tenants will be responsible for August rent and utilities.

The Landlord testified that they advertised the rental unit right away through an online website but were unable to find new tenants for August 2019.

The Tenants testified that they provided late notice to vacate but stated their position that an agent for the Landlord advised them that it was okay and not to worry. The Tenants stated that they therefore followed the Landlord's instructions when moving out following their notice on July 22, 2019.

The Tenants also stated that when submitting their notice to end the tenancy on July 22, 2019, the agent signed an agreement with them. They stated that as they had an agreement in writing from the Landlord, they had assumed everything was fine for them to move out despite having provided late notice. The Tenants confirmed that they received the letter from the Landlord dated July 23, 2019 but as this was received after the signed agreement the day prior, they assumed there were no issues with them moving out at the end of July 2019.

The Landlord stated that the Tenants are referencing an internal document that was provided to the Tenants upon receipt of their notice to end the tenancy. The Landlord indicated that the document references a date for a move-out inspection and other requirements upon the tenancy ending. The Landlord also explained that the document confirms that notice was received and that the Tenants will be moving out. However, the Landlord stated that this was not a mutual agreement regarding the end of the tenancy and was not an agreement that the Tenants did not owe rent for August 2019.

The Landlord is also seeking compensation in the amount of \$25.00 for parking fees for August 2019. The Landlord stated that this amount was due monthly and was paid at the same time as the rent, on the first day of each month. The Landlord submitted a copy of the parking agreement as well as the Tenant Ledger information which shows that a payment of \$25.00 was charged each month along with the rent.

The Tenants stated their disagreement to owing the parking fee for August 2019. The Tenants stated that it is not their fault as they followed the agent's instructions regarding moving out and therefore do not owe anything for August 2019.

The Landlord has also claimed \$300.00 for cleaning the rental unit and \$110.25 for carpet cleaning at the end of the tenancy. The Landlord submitted invoices and timesheets regarding these charges. The Landlord also noted that they were originally going to charge the Tenants \$125.00 for carpet cleaning, but that the actual amount of the invoice was \$110.25, which is therefore the amount they are claiming.

The Tenants stated their agreement to pay the cleaning costs in the amount of \$300.00 and carpet cleaning in the amount of \$110.25. They agreed that they participated in the move-in and move-out inspections. The Tenants stated that they signed their agreement at the time to the cleaning and carpet cleaning costs, but their disagreement was regarding rent and parking charges for August 2019.

The Landlord submitted a copy of the Condition Inspection Report which shows a move-in inspection date of January 30, 2012 and a move-out inspection completed on August 1, 2019. One of the Tenants signed the report at move-out stating that they agreed that the report fairly represents the condition of the rental unit. However, the report also stated that the Tenant disagrees regarding August 2019 rent. The parties agreed that the cleaning and carpet cleaning costs were not in dispute, but that the rent and parking for August 2019 were.

The parties both confirmed that the Tenants' forwarding address was provided on August 1, 2019 on the move-out Condition Inspection Report.

Analysis

Regarding the Landlord's claims for unpaid rent and for parking fees for August 2019, I refer to Section 45(1) of the *Act* which states the following:

- 45 (1) 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 the landlord receives the notice, and
 - (b) 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.

I also reference Section 53(1) of the *Act* which states the following:

- 53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

Accordingly, I find that when the Tenants provided notice to end the tenancy on July 22, 2019, the effective date of the notice automatically corrects to end the tenancy on

August 31, 2019; which would be one full rental month in accordance with Section 45 of the *Act*.

Although the Tenants stated that they had a signed agreement from the Landlord accepting their late notice to end the tenancy, neither party submitted such a document into evidence.

However, as the Landlord submitted a letter dated July 23, 2019 outlining to the Tenants that they will still be responsible for rent and other costs due in August 2019, I find it unlikely that just one day prior they had advised the Tenants that they would not be responsible for August 2019 rent. Instead, I find it likely that the document provided to the Tenants was regarding move-out instructions to the Tenants and confirmation that their notice to end the tenancy had been received.

Therefore, I accept the Landlord's testimony and do not find that the Landlord informed the Tenants that August 2019 rent would not be due. Instead, I find that on July 23, 2019 the Tenants were informed that they would be responsible for August 2019 rent and fees, due to the late notice received.

A party claiming a loss also has a duty to take reasonable steps to mitigate their potential losses pursuant to Section 7 of the *Act*. I accept the testimony of the Landlord that they advertised the rental unit for rent as soon as they received notice from the Tenants and that they were unable to find new tenants for August 2019. Therefore, I find that the Tenants owed rent as due on August 1, 2019 as per the tenancy agreement and Section 26 of the *Act*.

I also accept the evidence before me that shows that the Tenants paid a parking fee of \$25.00 each month. Therefore, I find that the Tenants also owed this fee for August 2019, due to their late notice to vacate which automatically corrected to end the tenancy on August 31, 2019 as stated above.

Regarding the claims for cleaning and carpet cleaning costs, I accept the Tenants' testimony that they agreed to have these amounts deducted from their security deposit and are not disputed the charges. Therefore, I award the amounts of \$300.00 and \$110.25 to the Landlord as claimed.

As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of when the tenancy ends or when the forwarding address is provided in writing to return the

security deposit or file a claim against it. As agreed to by the parties, the tenancy ended on August 1, 2019 which was the same day that the Tenants' forwarding address was provided in writing. As the Landlord filed the Application for Dispute Resolution on August 8, 2019, I find that they applied within the time allowable under the *Act*. Therefore, the Landlord does not owe the Tenants double the security deposit and may retain the deposit towards compensation owed.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

The Landlord is awarded a Monetary Order in the amount outlined below:

August 2019 rent	\$1,100.00
August 2019 parking	\$25.00
Cleaning	\$300.00
Carpet cleaning	\$110.25
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$467.50)</i>
Total owing to Landlord	\$1,167.75

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,167.75** as outlined above. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. 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: December 3, 2019

Residential Tenancy Branch