



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the security deposit and pet damage deposit, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. The parties confirmed the receipt of all evidence, with the exception of audio files, which were not served on the Residential Tenancy Branch (RTB) and as a result, no audio files have been considered. Regarding the remainder of the documentary and/or digital evidence, I find the parties were sufficiently served under the Act.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. If either party is entitled to a monetary order, that order will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that a fixed-term tenancy began on December 1, 2018 and was scheduled to revert to a month to month tenancy after December 1, 2019. The tenants stated that they vacated the rental unit on July 31, 2019, and the landlords stated that the tenants vacated on July 27, 2019.

The tenants monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of security deposit and pet damage deposit	\$1,150.00
2. 12 months rent compensation	\$15,216.00
Total	\$16,366.00

Regarding item 1, the tenants claim that they provided their written forwarding address to the landlord in person on July 30, 2019, which the landlords denied. The tenants did not supply a copy of their written forwarding address in evidence for my consideration. The landlords stated that the first time they received the tenants' new address was when the landlords were served with the application before me.

Regarding item 2, the tenants confirmed that they did not dispute the 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated June 29, 2019 (4 Month Notice). A copy of the 4 Month Notice was submitted in evidence and indicates the following details for ending the tenancy:

- perform renovations or repairs that are so extensive that the rental unit must be vacant.
- No permits and approvals are required by law to do this work.

-Floors (lino and carpet), Ceilings (drywall and paint), Perimeter drains (excavate), Door and locks (Repair or replace), Walls (paint and patch).

The landlords testified that all work was completed with the exception of the perimeter drains as they had an offer to purchase their home, which they accepted in September 2019 and the sale completed on October 30, 2019. Many colour photos were presented during the hearing, which the landlords stated support that all the work was completed with the exception of the perimeter drains. Photographic evidence presented showed a newly painted kitchen, new flooring, new bedroom flooring, partially painted exterior, new windows, garbage and damaged items in need of disposal, caulked windows, drywall equipment with ceiling drywall installation, and various receipts.

The tenants submit that the landlords did not complete all of the work indicated on the 4 Month Notice and instead sold the property and are seeking 12 months of rent in compensation under the Act.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage.

Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – Firstly, section 38(1) of the Act applies and states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[Emphasis added]

Based on the evidence before me, as the tenants failed to provide a copy of their written forwarding address, I am not satisfied that the tenants served their written forwarding address on the landlords and the service of the application does not suffice. Therefore, pursuant to section 62(3) of the Act, I find that as of the date of this decision, December 18, 2019, the landlords have received the tenants' written forwarding address, which I have included on the cover page of this decision for ease of reference. I also make the following order.

I ORDER the landlords to return the tenants full combined deposits in the total amount of **\$1,150.00** no later than 15 days after the receipt of this decision.

If the landlords fail to comply with my order, I grant the tenants liberty to apply for the return of double their combined deposits under the Act.

Item 2 - As the tenants did not dispute the 4 Month Notice, I do not need to determine if the work completed required vacant possession as the timeline for the tenants to dispute the 4 Month Notice has passed. Therefore, I have carefully reviewed the 4 Month Notice and find that the landlords have provided sufficient evidence that they completed all of the work that would have required vacant possession. In other words, as the perimeter drain work/excavation would have taken place outside of the rental unit, I find that the landlords did comply with the work stated would be done that required the rental unit to be vacant, which included and is not limited to new ceiling drywall, painting throughout the rental unit and new flooring.

Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[Emphasis added]

Based on the evidence before me, I find that the landlords did take reasonable steps to accomplish the stated purpose for ending the tenancy by completing all of the inside work listed on the 4 Month Notice. I do not find the perimeter drains to be a fatal flaw as that work would have been completed outside the rental unit. Furthermore, I find the sale of the property is a moot point, as the sale occurred after the work was completed by the landlords, which I find to be reasonable based on the wording of the 4 Month Notice. Therefore, I find the tenants have provided insufficient evidence to support that the landlords failed to comply with section 51(2)(a) of the Act. As a result, I dismiss item 2 due to insufficient evidence, without leave to reapply.

As the tenants' application was not successful, I do not grant the filing fee.

Conclusion

The tenants' application fails.

The landlords have been ordered to return the tenants' combined deposits of \$1,150.00 within 15 days of the receipt of this decision. The tenants' written forwarding address has been provided on the cover page of this decision for ease of reference. If the landlords fail to comply with my order, I grant the tenants liberty to apply for the return of double their combined deposits under the Act.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2019

Residential Tenancy Branch