



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNSD, FFT

Introduction

This hearing involved cross applications made by the parties. On August 16, 2019, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to retain the security deposit in partial satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On August 28, 2019, this Application was set down for a participatory hearing on December 12, 2019 at 1:30 PM.

On September 4, 2019, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act*. On September 11, 2019, this Application was set down to be heard as a cross-application with the Landlords’ file.

Both the Landlords attended the hearing and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlords advised that a Notice of Hearing and evidence package was served to the Tenant by registered mail on August 29, 2019 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

The Tenant advised that she served the Notice of Hearing and evidence package to the Landlords by registered mail on September 13, 2019 and the Landlords confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served with the Notice of Hearing and evidence package.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recovery of the filing fee?
- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2018 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on July 31, 2019. Rent was established at \$1,200.00 per month, due on the first of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenant advised the Landlord, via email on July 15, 2019, that she would be vacating the rental unit by August 15, 2019. The Landlords advised that they had discovered that the Tenant had rented a new place for August 1, 2019 and they were given two dates to do a move-out inspection, so they chose July 31, 2019. While there was no mutual agreement in writing to end the tenancy on this date, there was agreement with the Tenant. They then texted the Tenant in August 2019 asking for rent from August 1 – 15 and for utilities. The Landlords rented the rental unit out on September 1, 2019 and are seeking compensation in the amount of **\$1,200.00** for the rental loss of August 2019. The Landlords submitted email exchanges as documentary evidence to support their position.

The Tenant stated that she advised the Landlords she could vacate the rental unit before August 15, 2019 and that the Landlords wanted to conduct the move-out inspection on July 31, 2019. She advised that the Landlords then texted her on August 1, 2019 asking her for rent. She is seeking compensation of **\$1,200.00**, which amounts to double the security deposit. She submitted email exchanges and screenshots of text messages to support her position.

All parties agreed that the Tenant's forwarding address was provided on or around August 9, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address was served to the Landlord on or around August 9, 2019. Furthermore, the Landlords made their Application within the 15-day frame to claim against the deposit. As the Landlords were entitled to claim against the deposit still, and as they complied with Section 38(1) of the *Act* by making a claim within 15 days of the tenancy ending, I find that they have complied with the requirements of the *Act* and therefore, the doubling provisions do not apply. As such, the Tenant's claim for a return of double the deposit is dismissed in its entirety.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlords' claim for the rental loss, it was explained to the parties during the hearing that based on the rent being due on the first day of each month, the rental period would be from the first of the month to the last day of the month. As well, the Tenant is required to give one, whole month's notice and any incorrect effective date in a notice would automatically self-correct pursuant to Section 53 of the *Act*. Based on the Tenant's notice to end tenancy dated July 15, 2019, they were advised that the date the Tenant noted as the end of tenancy of August 15, 2019 would have automatically self corrected to August 31, 2019 and she would be responsible for the entire month of rent. As such, there was no requirement for the tenancy to have ended any sooner than August 31, 2019.

However, I find it important to note that in an email dated July 25, 2019, Landlord J.H. stated, "I am just mindful for showing and rent out for August". Furthermore, she stated in an email dated August 9, 2019, "I just checked the move out notice policy for month to month rental, you are supposed to pay us the rent for entire August even since you

did not give us the notice on the last day of the month...” While it is not entirely clear to me why the parties agreed to conduct the move-out inspection on July 31, 2019 or why the Landlords sought to attempt to re-rent the rental unit in August when the Tenant was still responsible for the rental unit, I am satisfied that both parties have erred in complying with the *Act*. As such, I find that the Landlord should be granted a monetary award in the amount of **\$600.00** as compensation for a loss of a half month’s rent only.

As the neither the Landlords nor the Tenant were successful in this Application, I find that neither party is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in full satisfaction of the debt outstanding.

Conclusion

The Landlords are entitled to retain the security deposit in full satisfaction of the debt outstanding.

The Tenant’s Application for double the security deposit is dismissed without leave to reapply.

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 14, 2019

Residential Tenancy Branch