



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, RPP, MNSD, MNDCT, FFL, MNDCL-S

Introduction

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- a monetary order for compensation for loss or money owed pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlords to return the tenants’ personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidentiary materials.

Issue(s) to be Decided

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

Are the tenants entitled to an order requiring the landlords to return the tenant's personal property?

Are the tenants entitled to return of his security deposit?

Background and Evidence

This fixed-term tenancy began on September 1, 2019, and was to end on August 31, 2020. Monthly rent was set at \$850.00, payable on the first of every month. The landlords collected, and still hold, a security deposit and a pet damage deposit in the amount of \$425.00 each deposit. The tenants moved out on December 31, 2019 after giving the landlords notice by way of a text message on December 11, 2019 that they would be moving out.

The tenants filed an application for the return of their personal belongings, specifically the tenants' tires, which the tenants testify are stored in the landlord's shed on the landlord's property. The landlord testified they had no knowledge of the condition or whereabouts of the tires, and that they do not possess the keys to the shed as the shed is currently used by other tenants. The landlord testified that the tenants can gain access to the shed by talking directly to these tenants. The tenants are seeking compensation for the tires and rims.

In addition to the application for the return of their items, the tenants made the following monetary claims:

Item	Amount
Return of damage deposit and pet damage deposit	\$850.00
Compensation for failure to return	850.00

deposits	
2.5 hours of labour/driving/gas for installation of drier	100.00
1.5 hours of labour for cleaning and supplies for cleaning mess left by renovators	40.00
Compensation for winter tires/rims not returned/locked in shed	600.00
Filing Fee	100.00
Total Monetary Order Requested	\$2,540.00

The tenants are requesting compensation for the landlords' failure to return their security and pet damage deposits. The tenants provided their forwarding address to the landlords on December 27, 2019, which was acknowledged by the landlords. The tenants testified that the landlords retained their deposits without their permission, and failed to file an application within 15 days of them moving out.

The tenants are also seeking compensation for the time they spent assisting the landlord with the installation/moving of a drier. The landlords testified that the agreement was to reimburse the tenants only for the cost of the drier, which was \$60.00. The landlords dispute that they had ever agreed to reimburse the tenants for their time and labour, or gas, moving and installing the drier.

The tenants are also seeking compensation for the time and supplies for cleaning after the renovation company left a mess on the property. The tenants testified that they had to clean up the mess and garbage left behind. The landlords testified that the renovation company only left items behind in the backyard, and the tenants were not obligated to clean the items. The tenants testified that they often communicated with the landlord by way of text message, and the landlord had asked them to assist by cleaning the items up.

The landlords are requesting 1 month's rent in compensation for the tenants' failure to give proper notice in ending the fixed term tenancy. The landlord testified that the tenants had assisted them in finding a new tenant, and after screening several applicants, they were only able to select one suitable tenant, who was not able to move

in until February 1, 2020, for the same monthly rent. The landlords testified that they had mitigated the tenants' exposure to losses by allowing them to assist them in finding a new tenant, and had selected the first suitable tenant. The tenants testified that there were other tenants available and interested in moving in for January 1, 2020, but the landlord selected the tenant who was not able to move in until February 1, 2020.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

While the tenants did notify the landlords of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to

ending this tenancy early. The tenants moved out earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlords are entitled to the loss of rental income for January 2020.

I have considered the testimony of the tenants that the landlords could possibly have mitigated the tenants' exposure to the losses claimed by re-renting the home to a tenant who was available for January 1, 2020. However, I find that the landlords had provided a reasonable explanation for why they had chosen a tenant for February 1, 2020 despite the loss of one month's rent. I find that the landlords had considered their duty to mitigate their losses, while balancing the need to find a suitable tenant for the new tenancy.

Although the landlords have an obligation to mitigate the tenants' exposure to their losses as required by section 7(2) of the *Act*, this obligation is balanced with the landlords' right to screen prospective tenants, and fill the vacancy with suitable tenants. I find the landlord's explanation for why they had chosen to fill the vacancy with a tenant for February 1, 2020 to be reasonable. Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$850.00 in satisfaction of the lost rental income due to the tenants' failure to comply with sections 44 and 45 of the *Act*.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenants' security deposit and pet damage deposit in full within 15 days the end of this tenancy. The landlords did not file their application for dispute resolution until February 10, 2020, nor they have the written authorization of the tenants at the end of the tenancy to retain any portion of their deposits.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit and pet damage deposit.

The tenants filed a monetary claim for their time, labour, supplies and gas assisting the landlords with the transport and installation of the drier, as well as cleaning of the garbage left behind after renovations. I find that the tenants failed to provide sufficient evidence to support a written, mutual agreement that existed between both parties for the tenants to be compensated for their time, labour, or materials as listed in their claim. Accordingly, I dismiss these portions of their claim without leave to reapply.

The tenants are seeking the return of their tires and rims, which they testified is still stored on the landlords' property. The landlord testified that they do not have keys to the shed, and that the tenants must be provided access by the other tenants who reside on the property.

Section 29 of the *Act* addresses the right of a landlord to enter a rental unit:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I find that although the shed is currently rented out as part of a tenancy agreement between the landlord and other tenants, the landlord still has the right to access the shed with proper notice. I order that the landlord provide proper notice under section 29 of the *Act* in order to allow the tenants to verify whether their personal belongings are still stored in the shed, and if so I order that the landlords return these items to the tenants. Alternatively, if the landlords or current tenants cannot provide access as allowed under the *Act* or legislation, I order that the landlords provide the tenants with written verification from themselves or the other tenants that the tires and rims are no longer stored in the shed.

The tenants filed for monetary compensation for the tires and rims. As the tires and rims may possibly still be stored in the shed, and as their condition or whereabouts are still unconfirmed, I find this portion of the tenants' application to be premature. Accordingly, I dismiss this portion of their claim with leave to reapply.

As both parties were successful in their applications and obtained offsetting monetary awards to recover the filing fee, no order will be made in regards to the recovery of their filing fees.

Conclusion

I order that the landlords provide proper notice under section 29 of the *Act* in order to allow the tenants to verify whether their personal belongings are still stored in the shed, and if so I order that the landlords return these items to the tenants. Alternatively, if the landlords or current tenants cannot provide access as allowed under the *Act* or

legislation, I order that the landlords provide the tenants with written verification from themselves or the other tenants that the tires and rims are no longer stored in the shed.

The tenants' application for monetary compensation for their missing tires and rims is dismissed with leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$850.00 as set out in the table below:

Item	Amount
Return of Security Deposit & Pet Damage Deposit	\$850.00
Compensation under section 38 of the <i>Act</i>	850.00
Less monetary order to landlords for tenants' failure to comply with sections 44 and 45 of the <i>Act</i>	-850.00
Total Monetary Order to Tenants	\$850.00

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the tenants' application 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: March 26, 2020

Residential Tenancy Branch