



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On April 14, 2020, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing. Tenants A.G., B.G., and F.D. attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Landlord advised that he served a Notice of Hearing and evidence package to each Tenant on or around April 16, 2020 but he could not remember how he served these packages. B.G. acknowledged that they received these packages by email on April 17, 2020. Based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing and evidence packages. As such, the Landlord’s evidence will be accepted and considered when rendering this Decision.

B.G. advised that an agent for the Landlord was served their evidence by hand on August 10, 2020 and the Landlord confirmed that he received this package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties 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 recover 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 originally started on September 1, 2017 as a fixed term tenancy ending on August 31, 2018. The Landlord alleges that new fixed term tenancy agreements were signed each year, and that the parties engaged in a new fixed term tenancy starting on September 1, 2019 and ending on August 31, 2020. A copy of this tenancy agreement was submitted as documentary evidence.

The Tenants allege that this most recent fixed term tenancy agreement was not signed by the Landlord. As well, the Landlord did not provide them with a copy of this new agreement that was signed by the Landlord.

All parties agreed that the tenancy ended on March 31, 2020 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$2,560.00 per month and was due on the first day of each month. A security deposit of \$1,250.00 was also paid.

All parties also agreed that the Tenants provided their forwarding address in writing on the move-out inspection report on March 31, 2020.

The Landlord advised that he is seeking compensation in the amount of **\$1,280.00** because the Tenants signed a fixed term tenancy starting on September 1, 2019 and ending on August 31, 2020, but they gave written notice to end their tenancy on February 23, 2020 and gave up vacant possession of the rental unit on March 31, 2020. He advised that he was able to re-rent the rental unit on April 16, 2020 so the amount he is seeking is for the half month of rental loss that he suffered.

B.G. advised that there was no new fixed term tenancy agreement as the Landlord did not sign this new agreement. Therefore, they were on a month to month tenancy and

they provided the proper written notice to end their tenancy. Furthermore, even if they were engaged in a new fixed term tenancy, A.G. advised that the Landlord advertised the rental unit on March 8, 2020 for \$2,850.00 per month which was more than what they were currently paying.

The Landlord advised that he did sign the most current fixed term tenancy agreement; however, he inadvertently submitted the unsigned copy for consideration on this file. Furthermore, he testified that he did not ever provide the Tenants with a copy of the most current fixed term tenancy agreement that was allegedly signed by himself. Finally, he confirmed that he advertised the rental unit for \$2,850.00 per month in March 2020.

The Landlord advised that he is seeking compensation in the amount of **\$38.62** because the Tenants owed for gas utilities. He submitted a copy of the gas invoice and he stated that he took the total and prorated the amount based on how many days the Tenants resided in the rental unit.

B.G. and F.D. both confirmed that they were responsible for the gas utilities, and F.D. advised that the Landlord's calculation for the gas utilities is a "good estimate" of what they would owe.

Finally, the Landlord advised that he is seeking compensation in the amount of **\$300.00** because the Tenants signed the most current fixed term tenancy agreement which included a liquidated damages clause for breaking a fixed term tenancy early. He stated that the amount he is seeking is to cover the cost of his time and effort to re-rent the rental unit. He also submitted documentary evidence to support his efforts to re-rent the unit.

B.G. advised that the Landlord would have to incur costs to re-rent anyways and that his advertising costs only amount to just over \$110.00. Furthermore, there is no proof that one of the advertisements posted was actually for the rental unit.

Analysis

Upon consideration of the testimony 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 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full 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 pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenants' forwarding address in writing on March 31, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on April 14, 2020. As the Landlord made this Application within 15 days of receiving the Tenants' forwarding address in writing, I am satisfied that the Landlord did not breach the requirements of Section 38. As such, I find that the doubling provisions of the *Act* do not apply in this instance.

With respect to the Landlord's 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 Landlord's request for liquidated damages, I find it important to note that Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.

- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

When reviewing the totality of the evidence before me, there is a dispute on whether the parties entered into a new fixed term tenancy agreement for a year starting on September 1, 2019 and ending on August 31, 2020. While the Landlord contends that he signed this agreement, the documentary evidence I have before me indicates that he did not sign it.

The Landlord also confirmed that he did not provide a copy of this new signed fixed term tenancy agreement to the Tenants as required by the *Act*. As the Landlord did not submit a copy of this agreement that was signed, and as he did not provide a copy to the Tenants within 21 days after they entered into this agreement, I find it more likely than not that this new agreement was never signed by the Landlord. As a result, I am satisfied no new fixed term tenancy was ever engaged into and that the Tenants were on a month to month tenancy.

Sections 44 and 45 of the *Act* set out how tenancies end and also specify that the Tenants must give written notice to end a tenancy. As the tenancy was a month to month tenancy, the Tenants' notice could not be "earlier than one month after the date the landlord receives the notice, and 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." Based on the undisputed evidence before me, I am satisfied that the Tenants gave their written notice to end their month to month tenancy on February 23, 2020, that it was effective for March 31, 2020, and that this notice complied with the *Act*.

As I do not find that a new fixed term tenancy was engaged in, I do not find that the Tenants are responsible for any rental loss after March 31, 2020. Consequently, I dismiss the Landlord's claim for April 2020 rental loss without leave to reapply.

Regarding the Landlord's request for compensation in the amount of \$38.62 for the gas bill, as all parties agreed that the Tenants were responsible for this and that it was an accurate reflection of what was owed to the Landlord, I grant the Landlord a monetary award in the amount of **\$38.62** to satisfy this claim.

With respect to the Landlord's request for compensation in the amount of \$300.00 for liquidated damages, as I am satisfied that a new fixed term tenancy was never engaged in, I do not find that the Landlord is entitled to this claim. As a result, I dismiss it in its entirety.

Even though the Landlord was awarded compensation for one issue, I do not find that he is successful in this claim. As a result, I do not find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Gas bill	\$38.62
Security deposit	-\$1,250.00
TOTAL MONETARY AWARD	\$1,211.38

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,211.38** in the above terms, and 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: August 18, 2020

Residential Tenancy Branch