



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on May 18, 2020 seeking an Order granting compensation for monetary loss or other money owed. They also seek recovery of the filing fee for their Application.

One of the tenants and an agent for the landlord attended the hearing. In the conference call hearing I explained the process. Each party had the opportunity to present oral testimony.

In the hearing, the agent for the landlord confirmed receipt of the tenant’s prepared evidence. Though the landlord prepared evidence in advance of the hearing, the tenant stated they did not receive it from the landlord. At the outset of the hearing, I confirmed that the items sent by the landlord were copies of evidence appearing in that of the tenant. With this verification, I proceeded with the hearing.

The tenant applied to recover the amount paid for the security deposit at the start of the tenancy. Under the *Act*, there is a more specific ground for dispute resolution concerning section 38. I have amended the tenants’ Application to reflect this in the examination of the issues below.

Issue(s) to be Decided

Are the tenants entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant who attended the hearing provided a copy of the tenancy agreement. The tenants signed the agreement with the landlord on July 19, 2019. The tenancy started on September 1, 2019 and was for a fixed term ending on April 30, 2020. They paid \$3200.00 per month. They paid the initial security deposit of \$3,200.00 on July 19, 2019.

Section 2 Part E indicates that; “At the end of [the fixed term] the tenancy is ended and the tenant must vacate the rental unit.” The landlord and tenant initialed in the provided area on the agreement for this clause.

Section 14 of the agreement gives instruction on ending the tenancy. For a fixed term tenancy, it provides for a fixed term tenancy: “If. . .the agreement does not require the tenant to vacate at the end. . .the agreement is renewed as a monthly tenancy. . . until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.”

The landlord provided a copy of the email sent by the tenants on April 5, 2020. It states: “This is our official notice to inform you that we, the TTs . . . are moving out of the current apartment. . . on April 30th, 2020.”

In the hearing, the tenant provided that there was no information put to them about 30 days’ notice. The landlord let the tenants know about this necessity after the tenancy ended. Within the tenancy agreement itself, the tenants did not see information that ending a fixed term ending needs prior notification.

The tenant also stated that, according to the agreement, they should make a separate request to change the tenancy to a month-to-month basis. They maintained that they moved out on the date specified in the agreement, April 30, 2020.

The landlord provided that they asked the tenants about changing to a month-to-month basis when the tenants paid their rent on April 1st. The landlord did not receive an answer, and then “very suddenly” on April 5 they received the email notice. This landlord stated this was “not enough time to recruit new tenants”.

Regarding the security deposit amount, the landlord presented that it was one month's rent amount, with one-half for the security deposit, and one-half for the furniture. The landlord paid back ½ the amount of the deposit on April 30.

The landlord also presented that they retained half the deposit because of the tenants' late notice to end the tenancy. They stated there is a right to keep the deposit because of late notice. They did not earn rent income for the months of May and June because of this late notice, and new tenants only entered the unit in July.

The tenants informed the landlord of their forwarding address on April 9 via email. This was a message to ask for return of the security deposit. The landlord replied to state their position that move-out notice was less than 30 days and "according to the law, your deposit can not be refund." On April 27, the landlord stated they would return half the amount by May 14. This is the furniture deposit, on a condition including a "professional clean" of the apartment.

The tenants here are claiming for the one-half outstanding amount of the security deposit, for \$1,600.00 – this is the security deposit not refunded because of the landlord's assertion that notice was late.

Analysis

The *Act* section 44 sets out the ways a tenancy may end:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (b) the tenancy agreement is a fixed term tenancy agreement that . . . requires the tenant to vacate the rental unit at the end of the term;

The *Act* section 45 states the following:

- 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.

There is no rule that sets a 30-day notice to end tenancy from tenants in a fixed-term tenancy. There is no explicit provision for this in the *Act*. Each subsection (a), (b), and (c) must be met when the agreement is explicit that the tenancy will end. These subsections apply to a situation set out in the contract where a fixed-term tenancy reverts to a month-to-month tenancy. Clause D) in the tenancy agreement is in line with the *Act* in this regard: it specifies “unless the tenant gives notice to end tenancy at least one clear month before the end of the term.”

That is not the condition that is in place in the tenancy agreement here; rather, the agreement is clear that the tenancy ends as indicated, at the end of the fixed term. The agreement section 14(3) is in line with what the *Act* sets out regarding a fixed-term tenancy.

The tenancy agreement, as completed and signed, sets out that the tenants paid a security deposit of \$3,200.00 on July 19, 2019. There is no clause or addendum setting out that it is comprised of one-half security deposit and an additional one-half for furniture deposit. By law, the security deposit amount is no more than one-half of one month’s rent – this is set clearly in section 19(1) of the *Act*. There was no evidence or testimony presented to set out that the landlord advised the tenants of the distinction on *two* deposits shown as one amount for the security deposit.

The landlord has retained one-half of the security deposit paid by the tenants because of late notice. The above terms show there is no requirement for the tenant to end a fixed-term tenancy with notice to the landlord. Moreover, neither the *Act* nor the tenancy agreement gives the landlord the right to retain a security deposit or a portion thereof. This is the overriding issue regarding the landlord retaining a portion of the total amount of money paid by the tenants for the security deposit.

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security deposit.

From the evidence I can establish as fact that the tenant provided their forwarding address to the landlords on April 9, 2020. The evidence for this is the tenant's email giving their forwarding address. The landlord presented this in their own evidence. The later event is the end of tenancy on April 30, 2020.

The landlord's position is that the tenant did not give a proper notice to end the tenancy. This is in terms of the timing, where the notice was less than one month in advance. I do not accept the landlord's submissions that improper notice to end a tenancy does not require the return of the security deposit.

I find the tenant ended the tenancy in proper fashion on April 30, 2020. In this case, the landlord had fifteen days from that date to make a claim against the security deposit.

In this hearing, there is no evidence the landlord made an application for dispute resolution claiming against the security deposit. Therefore, the landlord retaining the security deposit is not in line with the provisions of the *Act*. The landlord was bound by the provisions of section 38(1).

I find the landlord did not return the deposit to the tenant as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlords must pay double the amount of the security deposit. This is \$6,400.00. Reducing this amount by the portion already received by the tenants, \$1,600.00, reduces the total amount owing by the landlord to \$4,800.00.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of \$4,900.00. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: September 24, 2020

Residential Tenancy Branch