



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlords served the tenants with the submitted documentary evidence via Canada Post Registered Mail on October 14, 2020. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation, for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 28, 2020 on a fixed term tenancy ending on February 28, 2021 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 5, 2020. The monthly rent was \$1,500.00 payable on the last day of each month. A security deposit of \$750.00 was paid on February 4, 2020.

The tenants seek a monetary claim of \$3,100.00 which consists of:

\$1,500.00	Compensation, as per mutual agreement to end tenancy
\$1,500.00	Compensation, return of double (\$750.00) security deposit
\$100.00	Filing Fee

The tenants provided written details stating that "a signed contract to end the tenancy early was a provision to be paid \$1500 for our late notice and future rental upon the locks being changed at noon on June 30, 2020. The landlords refused to pay this."

The tenants have referenced a copy of an email from the landlords which offers compensation of \$1,500.00 if the tenancy is ended on June 30, 2020. The landlords confirmed that such an offer was made, but that the tenants failed to vacate the rental unit until July 1, 2020. The landlord argues that the tenants failed to move out by June 30, 2020, however the landlords claim that despite this a \$500.00 payment was made as per the submitted copy of an e-transfer on July 1, 2020. The tenant had argued that no such payment was accepted despite being sent. A review of the submitted picture shows that the amount of \$500.00, "Money Sent" and "Status: Deposited". The landlords argued that as the tenants failed to vacate the rental unit by June 30, 2020, the tenants were not entitled to the entire agreed compensation. The tenants argued that they were in compliance with the agreement, except for some belongings left on the patio that were picked up on July 1, 2020.

The tenants also seek return of double the security deposit, "Due to complications with not being able to provide a deposit on another rental, we are requesting double the original deposit of \$750.00."

The tenants argued that the tenancy ended on June 30, 2020. The landlords argued that the tenants did not end the tenancy by removing all of their belongings until July 1, 2020. Both parties confirmed the landlords still hold the \$750.00 security deposit. Both

parties confirmed the tenants provided their forwarding address in writing for return of the security deposit on July 2, 2020. The landlords argued that because the tenants failed to completely move-out on June 30, 2020, the tenants are not entitled to the compensation.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that an agreement was made by both parties to mutually end the tenancy on June 30, 2020 in exchange the landlords would compensate the tenants \$1,500.00. The tenants confirmed that they vacated the rental unit on June 30, 2020, but this was disputed by the landlords. The landlords stated that the tenants failed to remove all of their belongings until July 1, 2020 and as such are not entitled to compensation. The landlords confirmed that there were no attached conditions to the mutual agreement to end tenancy if the tenants failed to vacate by June 30, 2020. On this basis, I find despite the discrepancy of 1 day, the tenants have fulfilled their obligations in ending the tenancy and are entitled to the complete compensation of \$1,500.00.

However, the tenants have argued that the \$500.00 etransfer payment was not received by the tenants. The landlords have provided a picture of an etransfer dated July 1, 2020 which shows a \$500.00 amount sent and the status as "Deposited". Despite the tenant arguing that this amount was not accepted, I find on a balance of probabilities that the amount of \$500.00 was paid. As such, I order that the landlords pay the outstanding \$1,000.00 in compensation to the tenants.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, both parties confirmed that the tenancy was to end on June 30, 2020. Despite an argument from the landlords that the tenancy ended on July 1, 2020, both parties confirmed that the tenants provided their forwarding address in writing for return of the \$750.00 security deposit on July 2, 2020. Both parties confirmed that the landlord did not file an application in dispute of its return nor does the landlord have the tenants' consent to retain it. On this basis, the tenants are entitled to return of the original \$750.00 security deposit.

Pursuant to Section 38(6) the landlords having received the tenants forwarding address in writing for return of the security deposit on July 2, 2020 failed to return it or file an application to dispute its return. On this basis, the landlords are liable to an amount equal to the security deposit of \$750.00.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$2,600.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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: October 26, 2020

Residential Tenancy Branch