



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL**
 MNSDS-DR, FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application for dispute resolution and evidence by sending to a forwarding address provided by the tenant on August 15, 2020. The landlord provided a valid Canada Post tracking number as evidence of service. The tenant disputed that they were served and said that the address they had provided was a friend’s address purely for receipt of a returned deposit and not a forwarding address where they could be served. The tenant confirmed that the landlord’s materials were received at the address they provided, but said that they refused to view the materials.

The landlord confirmed receipt of the tenant's application and materials and based on their testimony I find the landlord duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Should the deposit for this tenancy be returned to the tenant?
Is either party entitled to recover their filing fee from the other?

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 arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This fixed-term tenancy began on August 1, 2020 pursuant to a written tenancy agreement signed by the parties on July 13, 2020. The monthly rent was \$3,600.00 payable on the first of each month. The tenancy agreement also provides that the tenant is responsible for all utilities and to maintain the outdoor garden and lawn of the rental property.

A security deposit of \$1,800.00 was collected and is still held by the landlord. A condition inspection report was prepared by the landlord and the tenant's agent. The tenant's agent did not sign the condition inspection report, but the tenant testified that their agent was present.

The tenant notified the landlord verbally of their intention to end the tenancy on August 2, 2020 and subsequently by email dated August 11, 2020. The parties gave evidence that they explored finding another occupant to assume the tenancy, but no suitable candidate was found.

In the notice to end tenancy of August 11, 2020 the tenant writes:

Also, I would like to have my deposit back in two weeks, you can etransfer it to my email or mail a check to this address: [Address]

The tenant submits that the address provided was not intended to be a forwarding address and that they have not yet provided a forwarding address to the landlord. The tenant submits that they have not authorized the landlord to retain any portion of the deposit for this tenancy.

The landlord submits that upon receiving the notice from the tenant to end the fixed-term tenancy they took reasonable measures to find a new occupant and were able to have a new tenancy commence as of September 15, 2020. The landlord submits that as a result of the tenant ending the fixed-term tenancy early they incurred rental income losses of \$1,800.00, half a month's rent. The landlord also submits that they incurred losses for the utilities and lawncare which the tenant failed to pay or perform. The landlord submitted bills for their costs and testified that the total losses for these items is \$292.57.

Analysis

The tenant provided an address at which the landlord may return the security deposit in their email correspondence of August 11, 2020. The tenant disputes that the address provided is a forwarding address as they do not yet have a permanent residence. I find the tenant's submission to be logically inconsistent and unpersuasive.

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

If the tenant has not provided a forwarding address as they assert there is no obligation on the part of the landlord to return any portion of the security deposit for this tenancy and the tenant's application is premature.

However, I find that a mailing address where a security deposit may be returned meets the ordinary meaning of a forwarding address. It is not necessary that the tenant reside at the address provided but simply that it be a valid mailing address where correspondence, including the security deposit for this tenancy, may be received. It is not open for a tenant to provide an address and assert that the running of time for the landlord to either return the security deposit or file an application for dispute resolution has commenced, while simultaneously claiming that they have not provided a forwarding address where they can be served with the landlord's application for dispute resolution.

Based on the conduct of the parties, and the tenant's testimony that the address provided was intended to be one at which they could receive the security deposit, I find that the address provided is a forwarding address as contemplated under the *Act*. It is therefore, the valid address at which the tenant could be served with the landlord's application and evidence.

The parties gave evidence that the landlord's application for dispute resolution and evidence was received at the address provided by the tenant. While the tenant testified that they refused to view any materials that was not simply a cheque returning their security deposit, I find their refusal to review the materials does not negate the service provisions of the *Act*. Based on the undisputed testimony of the parties I find that the tenant was duly served with the landlord's materials in accordance with sections 88 and 89(1)(d) of the *Act* and has been sufficiently served in accordance with section 71.

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.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenant gave verbal notice to end the tenancy on August 2, 2020 and subsequently by written correspondence on August 11, 2020. The landlord submits that they took reasonable steps to mitigate their losses by reviewing potential candidates for a new tenancy and finding a new tenant for September 15, 2020. The tenant submits that the timeline was unreasonable and the loss is due to the landlord's failure to mitigate.

I am satisfied with the landlord's evidence including copies of correspondence, and their testimony that the measures taken were reasonable and appropriate under the circumstances. I find that any delay was caused by the landlord's due diligence in conducting credit and reference checks of potential occupants in accordance with professional standards. I find little evidence that the timeline was unreasonable or that the landlord delayed their efforts. Based on the totality of the evidence I find that the landlord incurred rental income losses of \$1,800.00 not due to their own actions or inaction but due to the breach of the fixed-term tenancy agreement on the part of the tenant. As such, I find the landlord is entitled to a monetary award in the amount of \$1,800.00 as claimed.

I find that the tenant was obligated to pay utilities and to maintain the yard and exterior of the rental unit as set out in the written tenancy agreement. I accept the evidence of the parties that the tenant failed to meet their obligations under the agreement and that the landlord incurred costs as a result. I accept the submission of the landlord supported in some utility bills that the total cost attributable to the tenant is \$292.57. I issue a monetary award in the landlord's favour in that amount accordingly.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$392.57 allowing the landlord to recover their loss of rental income, unpaid utilities, damage for lawncare and to recover their filing fee while retaining the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: December 4, 2020

Residential Tenancy Branch