



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord and tenant M.S. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord was personally served with the tenants' application for dispute resolution in mid November 2020. I find that the landlord was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendments

Tenant M.S. testified that one of the tenants listed on the application for dispute resolution is a minor. Pursuant to section 64 of the *Act*, I remove the minor's name from this application for dispute resolution.

On this application for dispute resolution the tenants listed the landlord's husband's first name but not his last name, as it was unknown to the tenants. Tenant M.S. testified that the landlord's husband was not served with this application for dispute resolution. As the landlord's husband was not served with this application for dispute resolution in

accordance with section 89 of the *Act*, I amend this application for dispute resolution to remove the landlord's husband's name as a landlord.

On this application for dispute resolution the tenants listed their current rental address as the address of the subject rental property. As both parties were aware of the correct address of the subject rental property, I amend the rental address on this application for dispute resolution to state the correct rental address, pursuant to section 64 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. On June 26, 2020 the parties entered into a verbal tenancy agreement for the subject rental property. The tenants were to take possession of the subject rental property on July 15, 2020 but were permitted to move their belongings in prior to July 15, 2020. The landlord gave the tenants a key to the subject rental property on June 26, 2020. Rent was to be \$1,400.00 due on the first day of each month.

Tenant M.S. testified that when the verbal tenancy agreement was entered into, he told the landlord that he has a cat. The landlord testified that the tenants did not tell her they had a cat and that she would not have agreed to the tenancy agreement if she had known they had a cat because her daughter is allergic. Tenant M.S. testified that on July 10, 2020 he received a call from the landlord's brother who told them that the tenants were not permitted to move in because they have a cat. Tenant M.S. testified that he informed the landlord's brother that the landlord could not change her mind five

days before they were supposed to move in and that they would be moving in on July 15, 2020.

Both parties agree that the landlord changed the locks of the subject rental property on July 15, 2020 and prevented the tenants from moving in.

Tenant M.S. testified that the tenants are seeking the following damages from the landlord:

Item	Amount
Rent paid	\$700.00
Security deposit	\$400.00
Lost wages	\$224.00
Rent paid to extend previous tenancy	\$850.00

Rent and security deposit

Both parties agreed that prior to July 15, 2020 the tenants paid the landlord \$700.00 for two weeks rent from July 15, 2020 to July 31, 2020 and a security deposit of \$400.00. Both parties agree that neither amount were returned to the tenants. The tenants are seeking the return of both rent paid and their security deposit.

Tenant M.S. testified that he left the tenants' forwarding address in the landlord's mailbox on July 15, 2020. The landlord testified that she received it months ago but could not recall on what date.

Lost wages

Tenant M.S. testified that tenant S.S.J. had to take two days off from work to search for new accommodation because the tenants were effectively homeless on July 15, 2020 as they had agreed to move out of their previous rental accommodation on that date. The tenants entered into evidence tenant S.S.J.'s timesheet which shows that he works between 8.15 and 8.3 hours per day. Tenant M.S. testified that S.S.J. earns an hourly rate of \$14.00 per hour. The tenants are seeking compensation for 16 hours of lost work at \$14.00 per hour for a total of \$224.00.

Rent paid to extend previous tenancy

The tenants testified that they were moving out of their previous accommodation because the landlord's son was moving in. The tenants testified that when they told their previous landlord about the actions of the landlord in this application for dispute resolution, the previous landlord agreed to extend their lease by two weeks, to July 31, 2020, at a rate of \$850.00. Tenant M.S. testified that rent at the tenants' previous rental unit was \$1,700.00 per month. Tenant M.S. testified that the tenants are seeking compensation in the amount of \$850.00 paid to the previous landlord.

Analysis

Section 1 of the *Act* defines a tenancy agreement as follows

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that the landlord and the tenants entered into a verbal tenancy agreement on June 26, 2020. I find that the verbal tenancy agreement agreed to give the tenants full, vacant and peaceable possession of the subject rental property on July 15, 2020. I find that the landlord breached the verbal tenancy agreement by changing the locks on July 15, 2020 and prohibiting the tenants from moving in.

Section 44 of the *Act* sets out how a tenancy may end. Section 44 states:

- 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:
 - (i)section 45 [*tenant's notice*];
 - (i.1)section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii)section 46 [*landlord's notice: non-payment of rent*];
 - (iii)section 47 [*landlord's notice: cause*];
 - (iv)section 48 [*landlord's notice: end of employment*];
 - (v)section 49 [*landlord's notice: landlord's use of property*];
 - (vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii)section 50 [*tenant may end tenancy early*];

- (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c)the landlord and tenant agree in writing to end the tenancy;
- (d)the tenant vacates or abandons the rental unit;
- (e)the tenancy agreement is frustrated;
- (f)the director orders that the tenancy is ended;
- (g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that the landlord did not end the tenancy in a manner permitted under section 44 of the *Act*. The landlord was not entitled to change the locks on the day of move in because the tenants had a cat, even if the tenants did not inform the landlord of the cat at the time the tenancy agreement was formed. I note that I make no finding on this point as it is not relevant to my decision.

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Rent and security deposit

I find that the landlord unilaterally ended this tenancy in a manner contrary to section 44 of the *Act*. As the tenants were not permitted to move in, the landlord is not entitled to retain their rent money. I order the landlord to return the tenants' \$700.00 rent payment.

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

I find that the landlord received the tenants' forwarding address in the last two weeks of July 2020. I find that the landlord did not return the tenants' security deposit or file an application for dispute resolution seeking to retain it. Therefore, pursuant to section 38(6)(b) of the Act, I find that the tenants are entitled to the return of double their security deposit in the amount of \$800.00.

Lost wages

I find that the landlords' breach of the tenancy agreement directly led to tenant S.S.J.'s loss of two days of work, as the tenants needed to find alternate accommodation on very short notice. I accept tenant M.S.'s testimony that tenant S.S.J. lost approximately \$224.00 of pay due to the landlord's breach of the tenancy agreement. I order the landlord to reimburse the tenants for this loss.

Rent paid to extend previous tenancy

The purpose of compensation is to put the injured party in the same position they would have been had the breach of the Act, tenancy agreement or Regulation not occurred. I find that had the landlord permitted this tenancy to start on July 15, 2020, the tenants would have paid \$700.00 in rent for the last two weeks of July 2020. Because the landlord breached the tenancy agreement, the tenants had to pay \$850.00 for the last two weeks in July of 2020. The difference is \$150.00. I therefore award the tenants compensation in the amount of \$150.00.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Rent paid to landlord	\$700.00
Doubled security deposit	\$800.00
Lost wages	\$224.00
Extra rent required	\$150.00
TOTAL	\$1,874.00

The tenants are provided with this Order 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: January 25, 2021

Residential Tenancy Branch