



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlords applied for a monetary order in the amount of \$2,449.00 for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, to offset any amount owing with the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlords, SK (agent), and the tenant attended the teleconference hearing and gave affirmed testimony. The agent and tenant were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed service of all relevant documentary evidence and confirmed that they had the opportunity to review documentary evidence prior to the hearing. I find the parties were sufficiently served under the Act as a result.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties. Any applicable orders would be emailed to the landlord for service on the tenant.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on September 14, 2019 and reverted to a month to month tenancy after September 30, 2020. Monthly rent was \$1,950.00 and was due on the first day of each month. The tenant paid a security deposit of \$975.00 at the start of the tenancy, which the landlords continue to hold.

The landlords' claim for \$2,449.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of November 2020 rent	\$1,950.00
2. Administrative costs for agent to represent landlords at hearing	\$399.00
3. Filing fee	\$100.00
TOTAL	\$2,449.00

Regarding item 1, the landlords have claimed \$1,950.00 due to the tenant providing insufficient notice to end the tenancy under the Act. The tenant presented a document and testified that they provided their notice via an online system on September 30, 2020, which was reviewed during the hearing. The "summary" document is missing the date in which the tenancy will end and is not signed by the tenant, although the tenant claims they signed it by clicking "submit".

The tenant then stated that the next day, which would have been October 1, 2020, they called the agent and asked if there was anything else required and the agent replied, "no", which the agent vehemently denied. Furthermore, the agent presented an email dated October 1, 2020, which states in part:

...It was good chatting with you on the phone yesterday. Could you please fill in the attached form as we do require a signature. If you could please get this in to us by end of today it would be greatly appreciated...

There is no dispute that it took the tenant until at least October 14, 2020 to fill out the attached PDF document entitled "Landlord BC Notice to End Tenancy." The tenant vacated the rental unit on October 30, 2020.

Regarding item 2, this item was dismissed during the hearing as there is no remedy under the Act for the tenant to be responsible for a landlord hiring an agent to act on their behalf under the Act. As a result, this item was dismissed without leave to reapply.

Regarding item 3, the filing fee will be addressed later in this decision.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 - I will first deal with how the tenancy ended. As of September 30, 2020, the tenant was in a month to month tenancy and section 45I find the tenant breached the fixed-term tenancy by vacating on October 31, 2019 versus April 30, 2020. I prefer the landlord's version of events related to the end of tenancy over that of the tenant, as I find the tenant's version is not reasonable and is not supported by documentary

evidence. The only documentary evidence I have before me is the fixed-term tenancy that indicates that the tenant should not have vacated prior to April 30, 2020. Therefore, I find the landlord has met the burden of proof and that the tenant breached section 45(1) and 45(4) of the Act, apply and state:

Tenant's notice

45(1) A tenant may end a periodic 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, and
(b) 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.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

[emphasis added]

Based on the above, I find the electronic submission by the tenant fails to comply with section 52 of the Act, which applies and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

[emphasis added]

I find the electronic notice was not signed as claimed by the tenant and that clicking the “submit” button does not replace a tenant’s signature. Furthermore, I find the tenant failed to provide the effective vacancy date. Therefore, I find the tenant ended the tenancy in a method that is not approved under the Act, and at the earliest the tenant could vacate without penalty would have been November 30, 2020, and therefore owes **\$1,950.00** for November 2020 rent as a result. I find the tenancy ended on November 30, 2020 as a result and I find the landlord has met the burden of proof in full. I have reached this finding as October 14, 2020 was the first agreed upon date between the parties that the landlord received the tenant’s written, signed notice to end tenancy that included an effective vacancy date.

Item 2 – As mentioned above, this item was dismissed during the hearing as I find that there is no remedy to claim for agent fees under the Act and that it is the cost of being a landlord if the landlords make the decision to hire an agent. As a result, I find the landlords have failed to meet the burden of proof for all 4 parts of the test for damages or loss under the Act, and I dismiss this item without leave to reapply, due to insufficient evidence. A tenant is not liable for agent fees when a landlord makes the decision to hire an agent under the Act.

Item 3 - As the landlords’ claim was mostly successful, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlords have established a total monetary claim of **\$2,050.00** and pursuant to sections 38 and 67 of the Act, I grant the landlords authorization to retain the tenant’s security deposit of \$975.00 in partial satisfaction of the landlords’ monetary claim. Pursuant to section 67 of the Act, I grant the landlords a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$1,075.00**.

I caution the tenant not to breach section 45 of the Act in the future.

Conclusion

The landlords’ claim is mostly successful.

The landlords have established a total monetary claim of \$2,050.00. The landlords have been authorized to retain the tenant’s full security deposit of \$975.00, which has

accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim pursuant to sections 38 and 67 of the Act.

I caution the tenant not to breach section 45 of the Act in the future.

The landlords have granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlords in the amount of \$1,075.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 1, 2021

Residential Tenancy Branch