



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, MNETC, RPP

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit or pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlords to return the tenants' personal property pursuant to section 65.

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

The landlords confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Preliminary Issue: Return of Tenants' Security Deposit

The tenants filed an application for the return of their security deposit. The tenants provided a letter in their evidentiary materials dated December 3, 2020 in regards to a suite that was available for rent on January 1, 2021. The landlords testified that the tenants had never formally given their forwarding address in writing to the landlords.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

I have reviewed the materials submitted, in addition to the testimony of both parties, and I am not satisfied that the tenants have demonstrated provision of their forwarding address to the landlord in writing. Accordingly, I dismiss the tenants' application for the return of their security deposit with leave to reapply.

As both parties were present in the hearing, the tenants' forwarding address was confirmed during the hearing. I informed the landlords that they had 15 days from the date of the hearing to either return the security deposit to the tenants in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

Preliminary Issue: Return of Tenants' Personal Property

The tenants filed an application for the return of their personal property. The landlord testified that these items were removed by the bailiff. The landlords agreed to ask the bailiff to release these items to the tenants. As this portion of the application was addressed, I dismiss the tenants' application for the return of their personal property with leave to reapply.

Issues(s) to be Decided

Are the tenants entitled to the monetary orders requested?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on March 15, 2020, with continued on a month-to-month basis after May 15, 2020. It was disputed by the parties as to whether the monthly rent was set at \$950.00 or \$975.00, payable on the first of the

month. Copies of the tenancy agreement were submitted for the hearing which show monthly rent was set at \$975.00. The landlord collected a security deposit in the amount of \$467.50, which the landlord still holds. This tenancy ended on or about December 10, 2020.

The tenants are seeking the following monetary orders:

Item	Amount
Return of the December 2020 Rent	\$975.00
Compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property	300.00
Filing Fee	100.00
Total Monetary Order Requested	\$1,375.00

The tenants are requesting the return of the December 2020 rent, which they sent to the landlord by way of electronic transfer. The tenants submitted a copy of the confirmation dated December 8, 2020 for a transfer of \$975.00. The tenants testified that the landlord had agreed that the December 2020 rent would be returned to them if they moved out. The tenants testified that they moved out on December 10, 2020 as agreed upon, but the December 2020 rent was not returned as promised by the landlord.

The landlords testified that there was a conditional agreement that the December 2020 rent would be returned if they left voluntarily. The landlords testified that following the issuance of an Order of Possession at a previous hearing, they had to obtain the services of a Bailiff after obtaining a Writ of Possession. The landlord provided a copy of the Writ of Possession in their evidentiary materials dated November 9, 2020. The landlord testified that after obtaining the Writ of Possession, the landlord gave the tenants until November 23, 2020 to voluntarily vacate the premises. The landlord entered into evidence a Notice to Vacate signed December 8, 2020 by the Court Bailiff for the tenants to vacate by December 10, 2020.

The tenants also requested compensation under section 51 of the *Act* in the amount of \$300.00 for the landlord's ending of this tenancy.

Analysis

The tenants request the refund of their December 2020 rent pursuant to an agreement between them and the landlords for moving out by December 10, 2020. The landlords

do not dispute that they had an agreement, but that this refund was conditional on the tenants voluntarily vacating the premises without the services of a Bailiff.

In review of the evidence submitted for this hearing, along with the sworn testimony, I am not satisfied that the tenants had provided sufficient evidence to demonstrate that the landlords had agreed to return their December 2020 Rent. Although I note that the text messages submitted do reference the return of rent, I do not find the text messages to constitute a proper, signed and dated agreement between the parties.

In order to claim for damage or loss under the *Act*, the party claiming the loss bears the burden of proof. In this case, the onus is on the tenants to prove, on a balance of probabilities, that the landlords owe the amount claimed. I do not find the tenants' position to be supported by the evidence. On this basis, I dismiss the tenants' application for the return of the December 2020 rent without leave to reapply.

The tenants also applied for compensation under section 51 of the *Act* in the amount of \$300.00. As noted below, a tenant is entitled to compensation if they receive a Notice to End Tenancy for Landlord's Use.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I am not satisfied that the tenants have been served a 2 Month Notice pursuant to Section 49. On this basis, I am not allowing the tenants' application for monetary

compensation pursuant to section 51 of the *Act*. This portion of the tenants' application is dismissed without leave to reapply.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenants' application to recover the filing fee without leave to reapply.

Conclusion

The tenants' application for the return of their security deposit as well as their application for the return of their personal property is dismissed with leave to reapply.

The remainder of the tenants' application is dismissed without leave to reapply.

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: April 7, 2021

Residential Tenancy Branch