



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT, MNRT, FFT**

Introduction

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

- A return of the security deposit for this tenancy pursuant to section 38;
- A monetary award for damages and loss pursuant to section 67;
- Recovery of the costs for emergency repairs pursuant to section 33; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit for this tenancy?

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

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 claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in August 2016 and ended on January 31, 2021. The monthly rent at the end of the tenancy was \$925.00 payable on the first of each month. A security deposit of \$475.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use dated December 12, 2020 with an end of tenancy date of February 15, 2021. The parties agree that the tenants paid full rent through January 2021. The tenants gave the landlord written notice to end the tenancy on January 18, 2021 and the tenancy ended on January 31, 2021. The tenants also provided their forwarding address in writing in their notice.

The tenants now seek a monetary award for the equivalent of one month's rent pursuant to section 51(1) of the Act and a return of the security deposit for this tenancy. The landlord acknowledges that the tenant is entitled to a return of the deposit but submits that the tenant withheld the monthly rent for February 2021 and thus have been granted compensation in accordance with section 51 of the *Act*.

The tenant also seeks a monetary award in the amount of \$11,100.00. The parties agree that there was a period in which the rental unit could not be occupied due to flooding. The landlord performed repairs and arranged for alternate accommodations during the period that the rental unit could not be occupied. The tenant now submits that the repairs were not done in a professional manner causing mould growth and smells which they believe was a health risk.

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.

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 that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

Furthermore, section 24 of the *Act* provides that a landlord who fails to prepare a condition inspection report in accordance with the *Act* extinguishes their right to claim against the security deposit.

The landlord acknowledges that the tenant has provided a forwarding address in writing prior to the end of the tenancy and that they have failed to return the security deposit in full within 15 days of the end of the tenancy. The landlord acknowledged that the tenant is entitled to a monetary award in the amount of double the security deposit for this tenancy. Accordingly, I issue a monetary award in the amount of \$950.00, double the value of the deposit for this tenancy.

Section 51 of the *Act* provides that a tenant who receives a notice to end tenancy for landlord's use under section 49 is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 50(1)(a) sets out that a tenant may end the tenancy earlier than the effective date of a notice under section 49 by providing the landlord at least 10 days' written notice.

In the present circumstances the tenants gave written notice by a letter dated January 18, 2021 to end the tenancy on January 31, 2021. I find that the notice was given in accordance with the *Act* and that this tenancy ended on January 31, 2021. Therefore, the tenant was no longer obligated to pay monthly rent on February 1, 2021.

The landlord submits that they waived the requirement for rent payment for February 2021 but the tenancy was ended and there was no obligation to be waived. I find that the tenant remains entitled to compensation in the amount of one month's rent pursuant

to section 51 of the Act and accordingly issue a monetary award in the tenant's favour in the amount of \$925.00.

I find insufficient evidence in support of the balance of the tenant's claim. While the parties acknowledge that there was a period when the rental unit could not be used, I find little evidence to support the tenant's position that there was any breach on the part of the landlord in causing the issue, failing to take reasonable measures to address the matter or that the tenant suffered any consequences for which a monetary award is appropriate. The few photographs of the suite submitted into evidence and the copy of the written correspondence are insufficient to establish on a balance of probabilities that the tenant incurred any damages or loss or that they are caused or contributed by the landlord. Consequently, I dismiss this portion of the tenant's application.

As the tenant was partially successful in their application I find it appropriate to order recovery of \$50.00, half of the cost of filing for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,925.00. The landlord 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: July 8, 2021

Residential Tenancy Branch