



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; 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 was assisted by a friend and interpreter who were calling on separate lines.

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.

The landlord confirmed receipt of the tenant's application and materials. The tenant disputed that they were served with the landlord's evidentiary materials. The landlord testified that they served the tenant with their evidentiary materials by registered mail sent to the address for service provided on the present application on August 9, 2021.

Residential Tenancy Rule of Procedure 3.15 provides that a respondent must serve their evidence so that it is received no less than seven days before the hearing. The tenant disputed that they were served with the landlord's evidence and based on the date of mailing the deemed service date would be August 14, 2021, less than seven days before the present hearing. The landlord provided no cogent explanation as to why they did not submit their evidence earlier in accordance with the Rules. I find that it would be prejudicial to the tenant to consider evidence that was not served in accordance with the Rules and decline to consider the landlord's documentary evidence.

Much of the tenant's evidence was in digital file formats that were corrupted, damaged or otherwise unreadable by the Branch. Pursuant to Rule of Procedure 3.10.5 I will not consider any of the files submitted which were not accessible by the Branch or the respondent.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their 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 tenancy was scheduled to start on March 1, 2021. The monthly rent was \$1,000.00 payable on the first of each month. A security deposit of \$500.00 was paid and is still held by the landlord.

The tenant took possession of the rental unit on March 1, 2021, submits that they suffered negative health effects due to the condition of the suite and immediately vacated that same day. The tenant gave notice to end the tenancy on that date having paid the rent in the amount of \$1,000.00 and provided a security deposit of \$500.00. The tenant submits that the rental unit was not properly cleaned and contained environmental allergens which seriously jeopardized their health. The tenant submitted a doctor's note dated March 2, 2021 where the clinician recommends that the tenant not reside in the rental unit.

The tenant submits that they informed the landlord that they would not be moving in and provided a forwarding address at which their deposit could be returned. While the tenant has provided copies of some text message correspondence between the parties there does not appear to be a clear provision of the forwarding address in writing in the evidentiary materials. The tenant confirmed at the hearing that the address for service provided on the present application for dispute resolution is their forwarding address.

The tenant now seeks a return of the rent paid for March 1, 2021, a return of the security deposit for this tenancy and to recover costs for moving into and out of the rental unit in the amounts of \$194.25 and \$315 respectively.

The landlord disputes the tenant's claim for a monetary award in its entirety.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the 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)(b) of the *Act*, equivalent to double the value of the security deposit.

In the present case while the tenant testified that they have provided the landlord with their forwarding address, I find little documentary evidence to support their testimony. The copies of the text messages exchanged between the parties does not show that the tenant has provided a proper forwarding address in writing as required under the *Act*. I find that the provision of banking or electronic banking information is not a substitute for a proper forwarding address.

In accordance with section 38 of the *Act*, the landlord's obligation to return the deposit or file an application for authorization to retain all or a portion of the deposit has not commenced as the tenant has not provided a proper forwarding address in a manner consistent with the *Act*. I therefore find that the portion of the tenant's application seeking a return of the security deposit for this tenancy is premature and dismiss it with leave to reapply.

The tenant testified in the hearing that the address for service of this application for dispute resolution is the tenant's correct and current forwarding address. Therefore, in accordance with section 71(2)(b) of the *Act*, I find that the landlord has been sufficiently served with the tenants' forwarding address as of the date of the hearing, August 19, 2021.

I find that the landlord has now been served with the tenants' forwarding address as of the date of the hearing, August 19, 2021 and they have 15 days from this date to either return the balance of the deposit or file an application for authorization to retain those amounts in accordance with section 38 of the *Act*

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.

The tenant submits that the landlord did not provide a rental unit in a state of repair and decoration that met the health, safety and housing standards required by law and they were able to end the tenancy with no notice pursuant to section 45(3) of the *Act*.

I find little evidence in support of the tenant's position. I find a single doctor's note issued without evidence that the physician examined the rental unit in order to conclude that any negative health effects are attributable to the rental unit to be of limited probative value. I find the tenant's testimony to consist of hyperbolic and subjective complaints with little evidence in support. The few pieces of evidence they have submitted shows a rental unit in reasonable repair. Based on the evidence I do not find that the tenant had a basis to end the tenancy pursuant to section 45(3).

I find that any notice given by the tenant on March 1, 2021 would have been effective on the date that is no earlier than one month after the date the landlord receives the notice and the day before the date in the month when rent is payable under the tenancy agreement. In this case the effective date of any notice issued on March 1, 2021 would have been April 30, 2021.

I do not find that the cost of moving by the tenant is attributable to any breach on the part of the landlord but simply due to the unilateral decision of the tenant to end the tenancy immediately after taking possession of the rental unit. Similarly, I find no basis for a return of the rent paid pursuant to the tenancy agreement. I therefore dismiss this portion of the tenant's application without leave to reapply.

As the tenant was unsuccessful in their application they are not entitled to recover their filing fee from the landlord.

Conclusion

The portion of the tenant's application seeking a return of the security deposit for this tenancy is dismissed with leave to reapply.

The balance of the tenant's 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: August 19, 2021

Residential Tenancy Branch