Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL / MNSDS-DR, FFT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2,050 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenant's application for:

- monetary order for $2,000 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing. The landlord was represented by his property manager ("**GT**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Tenants' Application

At the outset of the application the tenants advised me that they had recently filed an application to recover an amount equal to two times the security deposit (file number on the cover this decision). This matter had not yet been set for a hearing. They advised me that they had made an application for the same relief before, but that application was dismissed with leave to reapply on procedural grounds (file number on cover of this decision).

The landlord's application relates to whether or not the landlord may retain the security deposit in partial satisfaction the monetary claim sought. As such, I find that it makes little sense to adjudicate that portion of landlords application without also adjudicating the tenants' application for the return equal to double the security deposit.

I also note that it is standard practice of the residential tenancy branch address the issue of whether or not a tenant is entitled to the return up the security deposit or double the security deposit on any application made by landlord which the landlord seeks to retain the security deposit. As such, even if the tenants have not made their application, the matter of whether they were entitled to the return of two times the amount of the security deposit would need to be dealt with at this hearing.

I advised GT of this and asked if she was prepared to address the issue of whether or not the tenants were entitled to the return of two times the amount of the security deposit at this hearing, or whether she would prefer that this hearing be adjourned and be rescheduled to whatever date the tenants application would be heard.

GT stated that, notwithstanding having not been provided notice of the tenants' application, she would be able to address it on its merits at this hearing. She testified that she would prefer to deal with these matters today rather than have them adjourned to a later date.

As such, and with the consent of all parties, I ordered that the tenants' application be heard at this hearing.

I note that the landlord has not been served with any of the application materials or supporting evidence for the tenant's application. However, during the course of this hearing all the evidence tendered in support of tenants' application was found to be included in the evidence packages submitted (and served) for the landlord's application.

Preliminary Issue – Audio Recording

The landlord submitted a document in its evidence package that included a URL to a website which contains an audio recording. I was not able to access this audio recording prior to the hearing. Parties are required to submit the audio files themselves, and not links where the files can be found online, as part of their evidence packages. However, the tenants stated that they were able to access the audio recording prior to the hearing. As such I permitted GT to upload a copy of the audio recording to the Residential Tenancy Branch website once the hearing had concluded, for my review. I have reviewed it prior to writing this decision.

GT testified, and attendance confirmed, that she served the tenants with the notice of dispute resolution proceeding package and supporting documentary evidence via registered mail. The tenants testified, and GT confirmed, the tennis served the landlord with their evidence package via email. Absent the explicit consent written consent of the recipient, service by email is not a mode of service permitted under the Act or its regulations. However, GT stated that she was able to review the documentary evidence without issue. As such per section 71(2) of the Act, I deem that the tenants' evidence has been sufficiently served for the purposes of the Act and the Rules of Procedure.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $2,050;
2) recover the filing fee;
3) retain the security deposit in partial satisfaction of the monetary orders made?

Are the tenants entitled to:

1) a monetary order of $2,000;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

This dispute is unique in that all material events occurred prior to the date the tenants were to have moved into the rental unit. The tenants never did move into the rental unit and landlord's application is rooted in this failure.

The parties signed a residential tenancy agreement on January 30, 2021. The tenancy was to be for a fixed term and was to have started on March 15, 2021 and was to have ended on March 31, 2022. Monthly rent was to have been $2,000. The tenants paid the landlord a security deposit of $1000 on January 30, 2021.

The tenancy agreement included a liquidated damages clause which states:

> **13. LIQUIDATED DAMAGES**
>
> If the tenant breaches a material term of this agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct, of an intention to breach this agreement and end the tenancy by vacating, and does vacate before the end of any fixed term , the tenant will pay the landlord the sum of $2000 as liquidated damages and not a penalty for all costs associated with re renting the rental unit. Payment of such liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the premises and damages as a result of rental income loss due to the tenants breach of the terms of this tenancy agreement.

GT stated that this language was drafted by the landlord's agents, and the tenants did not have any input as to the clauses' content.

The tenants testified that they viewed the rental unit on January 30, 2021 and moved quickly towards entering into a rental agreement. At the time, the rental unit was occupied by another tenant. The tenants stated that they advised GT (who was present when the tenants viewed the rental unit) that they had to vacate their current residence on February 28, 2021 and would need to move into the rental unit on March 1, 2021. The then-occupant of the rental unit was to have moved out on February 28, 2021. The parties agree that the rental unit needed to be cleaned, repainted, and have minor repairs made and after the prior tenant moved out of the rental unit.

On January 30, 2021, the tenants testified that they advised GT that they would be able to paint and clean the rental unit and make the necessary repairs. They testified that GT thought this was a “great idea” and stated that she would allow them to move into the rental unit on March 1, 2021 to undertake this work. The tenants explained that this is why the start date of the tenancy agreement was March 15, 2021, and not March 1, 2021. They testified that they understood that they would be able to move into the rental unit on March 1, 2021 and then paint, repair, and clean the rental unit in exchange for being permitted to reside there, rent free, for the first half of March.

GT denied that she agreed to this on behalf of the landlord. She testified that she would not have agreed to allow the tenants to reside in the rental unit rent-free from March 1, 2021, as it would have made conducting an accurate move-in condition inspection report difficult, if not impossible. She testified that she suggested that she might retain tenant GA as a handy-man to do the painting, and would have agreed to grant him access to the rental unit as of March 1, 2021 for the purposes of doing this work. However, she denied that any agreement was reached or that they negotiated a price for his work. She denied that she agreed, on January 30, 2021, that the tenants could move into the rental unit on March 1, 2021 and undertake the painting and cleaning themselves.

The tenants testified that, after entering into the tenancy agreement, GT advised them that they would not be able to move in on March 1, 2021. This caused them a great deal of consternation, as they were required to vacate their former residence on March 1, 2021.

On February 11, 2021, GA emailed GT’s supervisor (“**NM**”) who works for the property management company responsible for administering the rental unit. He wrote:

> My wife and I have been working with [GT]. Unfortunately, we had a "miscommunication" before we signed our agreement. My wife and I had given our notice to end tenancy for Feb 28, before even finding the ad for the apartment. When we set up viewing the apartment, [GT] had asked us in advance if we might be able to move March 7. I had asked my manager if it was possible to extend my tenancy by a week, but it was not. We told [GT] this, and that we needed to move on the 28th. The compromise we negotiated was

> instead of waiting for painting and cleaning to be done before we moved, we would begiven the keys early and we could do the painting and cleaning, as I am a professional painter and know cleaners. I paint new rental apartments like this often, both empty and occupied. As compensation fordoing the painting and cleaning, we would get 1/2 a month free rent ($1000). Normally I would charge $2,400 for painting this apartment, but since we cannot wait to move, the benefit was getting the keys early.
>
> So, we signed the agreement starting March 15, with the understanding we would be given the keys on Feb 28. Yesterday I learned that [GT] did not mean she was giving us keys to move in, but rather so we could clean and paint. However, this is obviously not something we would have agreed to. Moving all our stuff twice, finding storage, and getting temporary accomodations for 2 weeks is too much hassle. So unfortunately, we will have to find another apartment.
>
> Why am I writing to you? I had multiple conversations yesterday with [GT] who did not try and find a solution, but rather asserted that the misunderstanding is entirely our fault, which devolved over 30 minutes into a yelling match. I gave up, and [GT] called back and my wife answered, and over another 40 minutes of the same circles, my wife even lost her temper, which is quite rare. [GT] said if we do not take this apartment we will not get our deposit back, but I can't understand any reason for that.

This email made its way to GT (I cannot say how), and she emailed NM and GA on February 11, 2021 as follows:

> 1. The reason I asked if the tenant can move on March 7 was that we need time to touch up paint wear and tear + cleaning etc., and as the previous tenant will move out on 2/28, March 1st is too tight/nervous, not enough time to do the above. I made it clear to them that we need a few days after 2/28 to get the unit ready for moving in, so the earliest time I can give them the key is March 7th. However March 7th is an uncommon tenancy starting date, so I suggested/asked them to talk to their current landlord/building manager about moving out later on 3/15 --- I said it should be no problem if there is no new tenant found yet for his current place. **With this discussion ABOVE, the FINAL and WRITTEN tenancy starting date on the tenancy agreement is March 15th**, and I *Verbally* said *since the tenant's job/profession is handyman/painter*, I can consider giving him the key on March 1st **TO DO THE WALLPAINTING** and small repairs etc.
>
> 2. The misunderstanding, according to the phone conversation from 7:23pm for half hour(screen shot attached), is that the tenant somehow insisted that what I meant was to give him the key on March 1st for him to MOVE IN and DO PAINTING/CLEANING etc. AT THE SAMETIME. I am REALLY surprised because based on COMMON SENSE, people do not and cannot live in a

property while do painting + cleaning “At the same time”. During the half-hour conversation, I was DRIVING and did tell the tenant several times that I was DRIVING and was Not a good time to brainstorm/think/provide a solution, but the tenant not only kept Falsely accusing me but also kept INSISTING that I provide a SOLUTION right away. And Before I could stop / pull over to think about solution, the tenant said he wants to go find another rental unit/property and turn away from the formal lease he signed.

3. As you can see in the attached screen shot, after the first 27 minutes conversation, the tenant hung up on me, but I called back right away on 7:50 and 7:52pm, at which time I already stopped driving and spent over 40 minutes to DISCUSS SOLUTION --- please click the link below to listen to the phone recording (file attached as well):

4. In the SOLUTION DISCUSSION conversation, I CLEARLY offered to give them the key on March 1st for them to MOVE IN their stuff WHILE doing painting and cleaning at the same time (although this is not ideal and very unusual), and than I will do another MOVE-IN INSPECTION AFTER the painting and cleaning are done/completed.

In the first 5-10 minutes the tenant understood my solution perfectly and seemed to be OK with it (at 12:30pm the tenant’s wife clearly stated my solution), but after around 10-12 minutes the tenant [GA] left this important conversation, and his wife seemed to have a problem with me checking the painting + cleaning work, and than turned the conversation to an accusation and finger-pointing direction, which is time-wasting and very Frustrating.

At the end I clearly asked [GA] to call me back to discuss the solutions further, and instead of calling me back, he sent an email with half and twisted facts to you.

On February 11, 2021, shortly after receiving GT’s email, NM emailed GA the following:

I have spoken to [GT] and as you stated in your email there seems to have been an unfortunate misunderstanding during this process.
I have read the proposal by [GT] and I am hoping that it works for you and your wife.

For clarity:
- You will get the keys on the fist
- Rent payments will start on March 15th
- In lieu of free rent you will paint the apartment
- [GT] or you will arrange to stretch the carpet
- [GT] will arrange for a suite inspection at your convenience

> Please let me know if there is anything else that I can help with anything else.

GA responded to NM and GT as follows:

> This is not [GT's] proposal, this was the original agreement we came up with before anything was signed. Unfortunately, after [GT's] lack of professionalism yesterday, we are definitely not comfortable with her managing our residence going forward. We are in the process of applying for a different apartment that's available now.

GT then emailed the GA asking him to confirm that he would not be moving into the rental unit on March 1, 2021. GA confirmed this and requested that the landlord return the damage deposit. GT acknowledged his confirmation, and advised him that she would "start looking for new tenant for this property right away then".

The following day (February 12, 2021), the tenants provided the landlord their forwarding address, via email, and requested the return of their security deposit. GT responded as follows:

> Providing mailing address for deposit return in two weeks is for tenants who moved in to a property and later on moved out AFTER fulfilling the tenancy agreement/lease/contract, which obviously does not apply in your case as you never even moved in, let alone moving out.

The landlord secured a new renter for April 1, 2021. To date, the landlord has not returned the security deposit. The landlord applied to keep the security deposit on April 2, 2021. The landlord seeks a monetary order of $2,050, which he wrote represents the following:

> LIQUIDATED DAMAGES (Clause 13. in the Tenancy Agreement Signed): 1. Loss of half month rent $1000 2. Additional Leasing fee for finding new tenant again $1,050

The tenants argued that the liquidated damages clause does not apply to them, as it requires them to have vacated the rental unit before liquidated damages would apply, as the relevant portion of the Liquidated damages clause states:

> If the tenant breaches a material term of this agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct, of an intention to breach this agreement and end the tenancy <u>by vacating, and does vacate before the end of any fixed term</u> , the tenant will pay the landlord the sum of $2000 as liquidated damages […]
>
> [emphasis added]

As they never moved in, they argue that they cannot be said to have vacated. Accordingly, they argue that the landlord is not entitled to liquidated damages.

The tenants made their application on August 4, 2021, and seek the return of double their security deposit, pursuant to sections 38(1) and (6) of the Act, which states:

> **Return of security deposit and pet damage deposit**
> **38**(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenants argue that the landlord did not apply to keep the security deposit within 15 day of receiving their forwarding address, and that the tenancy agreement ended when they advised the landlord that they would not be moving into the rental unit (February 11, 2021). As such, they argued they are entitled to recover double the security deposit.

GT argued that the tenancy did not end until the rental unit was re-rented on April 1, 2021. As such, she argued, the landlord was not obligated to return the deposit, or make a claim against it, until April 16, 2021.

Analysis

1. Liquidated Damages

The language of the liquidated damages clause is clear and unambiguous. A tenant is liable for liquidated damages in one of two circumstances:

1) if the tenant breaches a material term of this agreement that causes the landlord to end the tenancy before the end of any fixed term; or
2) if the tenant provides the landlord with notice, whether written, oral or by conduct, of an intention to breach this agreement and end the tenancy by vacating, and does vacate before the end of any fixed term

The tenants never moved into the rental unit. Dictionary.com defines “vacate” as follows:

> *verb (used with object),* **va·cat·ed, va·cat·ing.**
> to give up possession or occupancy of :*to vacate an apartment.*

To give up possession of something necessarily requires that one must have had possession of it on been occupying it in the first place. This is not the case with the tenants. The ordinary meaning of “vacate” requires that the rental unit must first be possessed by the person doing the vacating.

I agree with the tenants that the second part of the liquidated damages clause does not apply to their circumstances, as they did not vacate the rental unit. The liquidated damages clause is not part of the standard form tenancy agreement provided by the Residential Tenancy Branch. It was written by the landlord or his agents. As such, it could have been drafted in such a way so as to apply to the present circumstances. This was not done.

As they content of the clause were entirely within the control of the landlord, I decline to interpret the clause broadly so as to apply to the present circumstances.

Additionally, I do not find that the first basis for awarding liquidated damages applies. While the tenants may have breached a material term of the tenancy by not paying rent for the first month of the tenancy agreement, or by refusing to move into the rental unit at all, the landlord did not end the tenancy as a result. Section 44(1) of the Act sets out how a landlord may end a tenancy:

> **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:
> […]
> (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]*;
> […]
> (c) the landlord and tenant agree in writing to end the tenancy;

The landlord did not issue a notice to end tenancy. The parties did not mutually agree to end the tenancy, and, if they did, this would not constitute the *landlord* ending the tenancy, it would have been a mutual decision. As such, the first basis for awarding liquidated damages is not satisfied.

As such, I decline to award liquidated damages to the landlord.

However, this does not mean that the landlord is not entitled to compensation. On the application, the landlord characterized his claim as consisting of damages for the cost of re-renting the rental unit and for lost rent for March 15 to 31, 2021.

The liquidated damages clause does not entitle the landlord to recover lost rent. Rather, per the clause itself, the liquidated damages are for "all costs associated with re-renting the rental unit." The clause reserves the landlord's right to pursue "damages as a result of rental income loss due to the tenants breach of the terms of this tenancy agreement".

As such, and as the landlord indicated on its application that he seeks compensation for loss of rent, I must determine if the tenants breached the tenancy agreement causing loss to the landlord.

2. Loss of rent

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> [the "**Four-Part Test**"]

The parties agree that a tenancy agreement was signed. They disagree as to the exact terms of the agreement. The tenants state there was an oral agreement made at the same time as the written agreement whereby they would be allowed to move into the rental unit on March 1, 2021 to paint, repair, and clean the rental unit in exchange for not having to pay rent for the first half of March 2021. GT denied that any such agreement was made on January 30, 2021.

However, it is not necessary for me to determine which of these versions of events is correct. On February 11, 2021, NM, on behalf of the landlord, agreed to the version of the agreement put forth by the tenants. GA, in his reply, acknowledged that the version put forth by NM was "the original agreement we came up with before anything was

signed". As such, I find that as of February 11, 2021, the parties agreed to the terms of the tenancy agreement.

Despite this agreement, the tenants advised NM that they would not be moving into the rental unit because of GT's "lack of professionalism". This is not a valid reason to not move into the rental unit or to attempt to end a tenancy (I will discuss this in more detail shortly).

Section 16 of the Act states:

> **Start of rights and obligations under tenancy agreement**
> **16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

As such, the tenants were bound by the terms of the tenancy agreement from January 30, 2021 onwards, despite the fact they never took possession of the rental unit. As such, on March 15, 2021, they were required to pay rent of $1,000 per the tenancy agreement. They did not do this, in breach of the tenancy agreement.

Additionally, I find that by indicating to NM that they would not be moving into the rental unit, the tenant breached the tenancy agreement in an "anticipatory" way. Anticipatory breach is discussed in MacDougall's *Introduction to Contracts,* 2nd Ed.:

> A contract can be breached in an "anticipatory" way, that is to say the party who is supposed to perform can inform the other party that he or she is not going to perform when the time comes, or it becomes clear in advance that it will be impossible for one party to perform as promised and there is no "excuse" such as frustration to relieve the party from liability. The innocent party can either accept the breach and proceed to remedies immediately, or can affirm that is, not accept the early breach and proceed to remedies only when the other party still fails to perform at the time or times when the contract calls for performance.

In this case, the tenants indicated that they would not comply with their obligation under the tenancy agreement to pay rent when it was due. The landlord did not act on the breach and proceed to remedies immediately. Rather, GT started looking for a new tenant, and secured one for April 1, 2021. Then, the day after this tenant moved into the rental unit, the landlord made this application and "proceeded to remedies" seeking compensation for loss of rent. It is not unreasonable for the landlord to have waited until this point to make the application, as it would have been difficult to determine the amount of his loss prior to having secured a new tenant.

Accordingly, I find that the tenants breached the tenancy agreement, and that the landlord suffered a quantifiable loss as the result ($1,000). This satisfies the first three parts of the Four-Part Test.

I find that, by securing a new tenant to move into the rental unit for April 1, 2021, the landlord acted reasonably to minimize its loss of rent. Tenancies usually start on the first of the month. It is not unreasonable for the landlord to have had difficulty securing a new tenant for March 1, 2021, as this only left the landlord 19 days from when the landlord became aware of the tenants; intention to breach the tenancy agreement to secure a new tenant. It is common for application to look for a new rental unit more than one month prior to moving.

I find that the landlord has satisfied the fourth part of the Four-Part Test. As such, I order that the tenants pay the landlord $1,000, representing the amount of rent the landlord was entitled to earn from the rental unit for March 15 to 31, 2021.

3. Return of Double the Security Deposit

As stated above, the tenants are entitled to an amount equal to double the security deposit in the event that the landlord neither return the full amount of the deposit nor makes an application to retain the deposit with 15 days of either the end of the tenancy or receiving the tenants' forwarding address, whichever is later.

It is not disputed that the landlord has not returned the deposit, that he applied to retain it on April 2, 2021, and that the tenants provided their forwarding address to the landlord on February 12, 2021. As such, I must determine the date when the tenancy ended. The tenants argued that it ended when they advised the landlord that they would not be moving into the rental unit (February 11, 2021). The landlord argued it ended when the rental unit was re-rented and occupied by a new tenant (April 1, 2021).

Section 44(1) of the Act sets out how a tenant may end a tenancy:

> **How a tenancy ends**
> **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]*;
> […]
> (vii) section 50 *[tenant may end tenancy early]*;
> (c) the landlord and tenant agree in writing to end the tenancy;
> (d) the tenant vacates or abandons the rental unit;

As stated above, the tenancy was not ended pursuant to a mutual agreement to end tenancy. The tenants attempted to end it unilaterally due to the alleged "unprofessional" conduct of GT (the truth of which I specifically make no finding).

Section 45(1) of the Act relates to month-to-month tenancies and therefore does not apply in this case.

Sections 45(2) and (3) of the Act state:

> **Tenant's notice**
> **45**(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (c) 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.
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> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenants complied with neither of these sections. The earliest they could have ended the tenancy pursuant to section 45(2) would have been March 31, 2022. The tenants did not give written notice to the landlord of any material breach of the tenancy agreement and (if they did) they did not give the landlord sufficient time to correct it. As such, section 45(3) does not apply.

Section 45.1 of the Act does not apply, as there is no suggestion of family violence.

Section 50 of the Act relates to a tenant's ability to end a tenancy early after having received notice the landlord intends to end the tenancy pursuant to sections 49, 49.1, or 49.2. It does not apply to this case.

As stated above, the tenant cannot be said to have vacated the rental unit, as they have never possessed it. For similar reasons, I find that they cannot be said to have abandoned it. One cannot abandon something that one has never possessed. I find that the difference in the terms "vacate" and "abandon", in the context of section 44 of the Act, relates to whether a tenant has removed their possessions from the rental unit. If a tenant removed them, they could be said to have vacated the rental unit; if they did not remove them, but themselves did not return to the rental unit, the tenant could be said to have "abandoned" the rental unit. As such, I do not find that the tenancy was ended pursuant to section 44(1)(d).

Section 44(1)(f) of the Act provides the mechanism by which the tenancy agreement can be ended. It states:

> **44(**1) A tenancy ends only if one or more of the following applies:

(f) the director orders that the tenancy is ended;

In the circumstances, I find that it is appropriate to order that the tenancy ended on April 1, 2021, the date when the new tenant moved into the rental unit. Up until this point, as the tenancy agreement had not been validly terminated by either party, the tenants were bound by the terms of the agreement and obligated to pay rent when it was due. As stated above, the tenants breached the tenancy agreement in an "anticipatory" fashion, and the landlord elected not to "proceed to remedies only when the [tenants failed] to perform at the time […] when the contract calls for performance" (that is, pay rent when it was due).

As I have found that the tenancy ended on April 1, 2021, and as the landlord applied to retain the security deposit on April 2, 2021, I find that the landlord applied within the 15-day widow allotted to him as set out at section 38(1) of the Act. As such, the tenants are not entitled to received double the deposit as set out at section 38(6) of the Act.

I dismiss the tenants' application, in its entirety, without leave to reapply.

4. Filing Fees

Pursuant to section 72(1) of the Act, as the landlord has been partially successful in the application, he may recover the filing fee from the tenants. As the tenants have not been successful in their application, I decline to order that the landlord reimburse them their filing fee.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord $100, representing the following:

Rent for March 15 to 31, 2021	$1,000.00
Filing fee	$100.00
Security Deposit Credit	-$1,000.00
Total	**$100.00**

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: September 16, 2021

Residential Tenancy Branch