



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDCL-S, MNRL-S, FFL
For the tenant: MNSDS-DR, FFT

Introduction

The landlord filed an Application for Dispute Resolution (the “landlord’s Application”) on April 3, 2021 seeking an order to recover money for unpaid rent, other money owed, and the application filing fee. The tenants confirmed receipt of the hearing information and evidence provided by the landlord.

The tenant filed an Application for Dispute Resolution (the “tenant’s Application”) on April 26, 2021. They seek the return of the security deposit that the landlord is withholding since the tenancy ended. Additionally, they seek reimbursement of the application filing fee.

The tenant’s Application here was filed initially as a Direct Request. The matter proceeded by way of a participatory hearing because the tenant’s Direct Request application cannot be considered by that method when there is a cross-application by the landlord already in place.

The matter proceeded to a hearing pursuant to s. 74(2) of the *Act* on September 2, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing. Both parties acknowledged receipt of the other’s evidence and confirmed they had the opportunity to review the material prior to the hearing.

Issues to be Decided

For the landlord:

- Is the landlord entitled to a monetary order for recovery of rent/utilities and/or other money owed, pursuant to s. 67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

For the tenant:

- Is the tenant entitled to an Order granting a refund of the security deposit pursuant to s. 38(1)(c) of the *Act*?
- Is the tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the Residential Tenancy Agreement that both parties signed on September 12, 2020. Neither party disputed the terms therein. The tenancy began on October 1, 2020 for an 18-month term. The rent paid was \$1,825 per month payable on the first of each month. The tenants paid a security deposit of \$912.50 on September 12, 2020.

On March 21, 2021 the tenant advised the landlord via email of their intention to move out from the rental unit at the end of March. This was for “the daily interference of quiet enjoyment . . . due to the . . . neighbours and their kids. . .” On March 22 the landlord advised the tenant of the need for “the notice of termination at least one month before the effective date of the notice and or at least one month before the due day of the rent, whichever is later.” They also advised of the fixed-term tenancy, in which case the end-of-tenancy effective date “cannot be earlier than the maturity date of the ‘Fixed-Term’.

The parties met to inspect the unit on March 31, 2021. The tenant returned their keys on that date. In their evidence, the tenant provided the Condition Inspection Report form dated March 31. It states: “The apartment is returned to the landlord on March 31st, 2021. In a generally clean and good condition. Condo was professionally painted & cleaned & paid by tenant. All in good standing including the appliances.” Both parties signed this document.

The landlord's Application

The landlord applied for the one-month rent amount. This is where the "Tenancy breached 18-month 'Fixed Term' tenancy agreement." And: "Tenant refused landlord's offer to terminate the 'signed fixed-term tenancy' with 'mutual agreement', declined to pay the April 2021 rent in lieu of proper notice." The full amount of rent for the month of April 2021 is \$1,825.

In the hearing, the landlord described rental arrangements more generally: "for anyone who rents a place to live, they also have to give one month notice." They referred to s. 45 of the *Act*, which sets out a tenant's responsibilities with respect to giving notice to end the tenancy.

In their evidence, they showed they made an offer to the tenant for a mutual agreement to end the tenancy. On March 26 the tenant refused this offer, so the landlord messaged the tenant that they were responsible for the April rent, either with or without a mutual agreement.

The landlord also claims \$32 for a "Facebook Marketplace Rental Listing". This was a "12 Days boosted listing." The landlord provided a receipt/notification from the Facebook Ads Team to show they required a "boosted listing" for the "1 Bed 1 Bath Apartment" for 12 days. This is dated March 31, 2021.

The tenant responded to these claims from the landlord in the hearing. They stated they were in contact with the strata prior to their notice to the landlord of the end of tenancy; this was for "quite a few months." They made a call to the landlord on March 21 and at that time the "landlord didn't care about a one month notice."

On the landlord's effort to re-rent the unit via Facebook ads, the tenant stated there is no evidence to show the rental unit was available for April 1st.

For the landlord's claim of one month rent, the tenant questioned whether the unit was actually empty for one entire month.

The tenant's Application

The tenant applies for a monetary order in the amount of \$912.50 for the return of the security deposit. The tenant wrote when applying: "There was no move-in condition inspection report done. The move-out condition inspection report states the condo was left in good condition. I also had the condo professionally cleaned."

The Condition Inspection Report completed and signed by the parties on March 31 contains a forwarding address provided by the tenant. The tenant also advised the landlord of their forwarding address on March 26 via email. They provided receipts showing they paid for move-out cleaning on March 27; photos in their evidence verify this cleaning took place. Additionally, the tenant provided evidence that they paid for painting in the unit in October 2020.

The landlord in their statements and evidence showed that they answered the tenant's requests for miscellaneous repairs at the start of the tenancy. The landlord provided invoices and bank records to show proof of their payments to rental unit improvements.

Analysis

The landlord's Application

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*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 7(2) states:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The *Act* s. 45 sets out the tenant's responsibility for notifying the landlord in a certain manner:

- 2) A tenant may end a fixed term 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,

- b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- 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.

I find the agreement in place between the parties was that of a fixed-term tenancy. I find the landlord did not receive notice from the tenant in a timely fashion, and not within these prescribed timelines in the *Act*. For this reason, I find the landlord is entitled to the amount of April 2021 rent, for \$1,825. The tenant is legally obligated to pay this amount of rent – it is a loss to the landlord that results from the tenant’s failure to comply with the *Act* and the tenancy agreement.

I find the landlord mitigated their damages by renting the unit in a timely fashion – evidence for this is their approval from Facebook on March 31st. New tenants were not possible in the month following, where the tenant gave notice much closer to the end of March. There is nothing in the evidence to show the landlord gave the tenant approval for short notice; moreover, the evidence shows the landlord was prompt in their reply to the tenant, immediately asserting that a notice must comply with the *Act*.

I award the landlord \$32 for their ad costs to Facebook, in this situation a “boosted listing”. I find this was necessary in the circumstances, resulting from the tenant’s breach in giving short notice. I find this falls in line with the landlord mitigating damages in that they paid extra money to have extra coverage on Facebook. This \$32 represents a minimal cost to have an ad in place to re-rent the unit.

The tenant’s Application

To address the tenants’ claim for a return of the security deposit, I turn to the *Act*. The relevant portion regarding the return of the security deposit is section 38:

- 1) . . . within 15 days after the later of
 - a) the date the tenancy ends, and
 - b) the date the landlord receives the tenant’s forwarding address in writing;

The landlord must do one of the following:

- c) repay . . . any security deposit. . . to the tenant. . . ,
- d) make an application for dispute resolution claiming against the security deposit. . .

Following this, s. 38(4) sets out that the landlord may retain an amount from the security deposit with either the tenant’s written agreement, or by a monetary order of this office.

In this hearing, I find the tenants' address was within the landlord's knowledge by March 31, 2020. I find the landlord properly applied for dispute resolution within the 15 days set out in the *Act* on April 3, 2021. The landlord thus complied with s. 38(1) set out above.

Above, I found the landlord has a valid monetary claim; therefore, they are entitled to reimbursement against the security deposit.

The *Act* s. 72(2) gives me the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,857.00. After setting off the security deposit, there is a balance of \$944.50. I am authorizing the landlord to keep the security deposit amount and award the balance of \$944.50.

As the landlord is successful, I find they are entitled to recover the \$100.00 filing fee paid for their Application. The tenant was not successful; therefore, they are not entitled to this filing fee.

Conclusion

I order the landlord to pay the tenants the amount of \$1,044.50. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) where it may be 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 s. 9.1(1) of the *Act*.

Dated: September 13, 2021

Residential Tenancy Branch