



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

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

The landlord and the named tenant, D.R. (the tenants) attended the hearing via conference call and provided affirmed testimony. The tenant, T.R. did not attend and was not represented.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenants with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on May 11, 2021. Both parties also confirmed the tenants served the landlord with their submitted documentary evidence via email on June 8, 2021. Neither party raised any service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

At the conclusion of the hearing the landlord requested that her claim for recovery of the filing fee be cancelled. As such, this portion of the landlord's application was withdrawn and no further action is required.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss?
Is the landlord entitled to retain all or part of the security deposit?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a clarified monetary claim of \$800.00 as compensation for loss of rental income for the first two weeks of May 2021.

Both parties confirmed that the tenants vacated the rental unit after giving notice to end the tenancy on April 30, 2021. The landlord stated that there is a fixed term tenancy ending on June 30, 2021 which the tenants pre-maturely ended. The landlords stated that the tenants were notified that they were still responsible for the tenancy unless a new tenant could be found. The landlord stated that the rental unit was re-rented for May 15, 2021.

The tenants disputed the landlord's claim arguing the signed tenancy agreement does not provide for a term to the tenancy, only that the tenancy would end on June 30, 2021 which both parties had agreed to.

The tenants stated that it was his understanding based upon verbal discussions that the tenancy was for a fixed term of 6 months which would then go to a month-to-month basis.

The landlord argued that her understanding of the signed tenancy agreement signed by both parties was that it was for a 9 month fixed term period ending on June 30, 2021. The landlord further confirmed that the tenancy agreement was "not clear". However, the landlord stated that section "E" of the agreement was partially completed and initialled by both parties. I note that despite the landlord selecting section "C" this section was not completed as specified.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of both parties that this tenancy ended on April 30, 2021 after the tenants provided notice to end the tenancy.

The landlord seeks a claim of \$800.00 for the loss of rental income for the two week period of May 2021 before a new tenant was found to occupy it on May 15, 2021.

Residential Tenancy Branch Policy Guideline #3, Claims for Rent and Damages for Loss of Rent states in part,

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement...

In this claim both parties dispute the terms of the tenancy agreement. The landlord confirmed that the signed tenancy agreement was not clear, however claims that based on their agreement, the tenancy was for a 9 month fixed term tenancy. The tenants have argued that the tenancy was for a 6 month fixed term tenancy which then became a month-to-month term.

Both parties have referenced the “vacate clause” portion of the signed tenancy agreement which states that the tenancy ends on June 30, 2021 which was agreed to. The landlord has referenced this date as the end of the fixed term despite not providing

for this specific term in the signed agreement. The tenants have argued that based upon a past verbal discussion the tenancy was for a 6 month fixed term ending March 31, 2021 then to continue on a month-to-month basis until the end of tenancy on June 30, 2021.

Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies states in part,

Section 1 of the Residential Tenancy Act and the Manufactured Home Park Tenancy Act defines a fixed term tenancy as a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date...

In this case no term was selected by either party on the signed tenancy agreement. The landlord confirmed that the agreement was drafted by the landlord.

A review of section 2 of the signed tenancy agreement, section “E” states,

*At the end of this time, the tenancy is ended and **the tenant must vacate the rental unit.***

This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulations, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (Required): June 30, 2021

Residential Tenancy Regulation section number (if applicable):

No section number or sublease was indicated.

The landlord did not provide any submissions regarding the regulations or if there was a sub-lease agreement.

In this case, I find on a balance of probabilities that the landlord has failed to establish as part of her claim that the tenancy agreement was for a fixed term until June 30, 2021. It is clear based upon the submitted signed tenancy agreement drafted by the landlord that no end to the fixed term was provided. I also note that the landlord’s own comment during the hearing was that it was “not clear”. I also note that the landlord failed to complete section “E” that she relied heavily on. As such when a legal document is drafted by one party (the landlord) and a state of ambiguity exists concerning a term of the agreement, the benefit of the ambiguity goes to the other party (the tenants).

As the landlord has failed to establish a claim for loss of rental income and still holds the \$800.00 security deposit, I grant the tenants a monetary order of \$800.00 for return of the security deposit.

Conclusion

The tenants are granted a monetary order for \$800.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: November 05, 2021

Residential Tenancy Branch