



Dispute Resolution Services

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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 damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant A.K. and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The landlord testified that he served the tenants with a copy of this application for dispute resolution via email on May 16, 2021. Tenant A.K. testified that he received the landlord's application for dispute resolution on May 24, 2021. I find that the landlord's application for dispute resolution was sufficiently served for the purposes of this *Act* on the tenants, pursuant to section 71 of the *Act*.

The landlord testified that he served the tenants with his evidence via email but could not recall on what date. Tenant A.K. testified that he received the landlord's evidence but could not recall on what date. I find that the landlord's evidence was sufficiently

served for the purposes of this *Act* on the tenants, pursuant to section 71 of the *Act*. The landlord's evidence is accepted for consideration.

Tenant A.K. testified that he served the landlord with his evidence via registered mail on September 1, 2021. Tenant A.K. entered into evidence a Canada Post receipt stating same and a photograph of the registered mail package sent to the landlord's address bearing the same tracking number as the receipt. Tenant A.K. testified that the package was returned to sender. The landlord testified that he received the Canada Post pick up slip but did not pick the package up in time.

Residential Tenancy Policy Guideline #12 states that where a document is served by registered mail the refusal of the party to accept or pick up the item, does not override the deeming provision.

I find that the tenants served the landlord with their evidence in accordance with section 89 of the *Act*. Pursuant to section 90 of the *Act*, I find that the tenants' evidence was deemed served on the landlord on September 6, 2021, five days after its mailing. I find that the failure of the landlord to pick up the registered mail does not override the section 90 deeming provision. The tenants' evidence is accepted for consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to authorization to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This fixed term tenancy began in or around March of 2020 and ended on or around September 30, 2020 and was originally set to end on March 31, 2021. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants to the landlord. No written tenancy agreement was drafted. This was a verbal tenancy agreement.

The tenant testified that he provided the landlord with his forwarding address in writing via registered mail on March 3, 2021. The tenant entered into evidence a registered mail receipt for March 3, 2021; however, no proof of what address the registered mail was sent to was entered into evidence. A copy of the letter allegedly sent to the landlord was not entered into evidence. The landlord testified that he did not receive the tenants' forwarding address in writing.

The landlord's application for dispute resolution states that it was filed in response to another claim. The file number for the previous claim is on cover page of this decision. The decision from the previous arbitration is dated June 10, 2021 and states:

The tenant [tenant A.K.] confirmed in the hearing that they had never provided the landlord with a forwarding address in writing. The landlord confirmed in the hearing that they had filed an application for monetary losses associated with this tenancy on May 12, 2021, and are awaiting the hearing scheduled for November 9, 2021.

Tenant A.K. testified that he changed his testimony from that given in the June 10, 2021 hearing because after the hearing he found the registered mail receipt and remembered that he did send the landlord his forwarding address.

The landlord testified that the tenants moved out of the subject rental property without providing written notice. The landlord testified that the first time he learned about the tenants possibly moving out was on August 30, 2020 when he received a telephone call from potential landlords looking for a reference check on the tenants. The landlord testified that on September 24-25, 2021 the tenants verbally told him that they were moving out at the end of the month. The landlord testified that he is seeking \$1,700.00 in lost rental income for the month of October 2021 because new tenants were not found until November 1, 2021. The landlord entered into evidence a copy of the new tenancy agreement starting November 1, 2021.

Tenant A.K. testified that they moved out before the end of the fixed term because the landlord told them they had to. Both parties agree that all discussions between the parties was verbal. Neither party entered into evidence documentary evidence supporting their respective versions of how the tenancy ended.

Both parties agree that the landlord did not complete move in or move out condition inspection reports. The landlord testified that the tenants left the subject rental property dirty and that it cost him \$530.00 to have the subject rental property cleaned. The landlord testified that the floors, kitchen cabinets and windows were dirty. The landlord entered into evidence a cleaning receipt for \$530.00. The landlord did not enter into evidence any photographs of the subject rental property or other documentary evidence showing the dirty areas.

The tenant testified that the subject rental property was cleaned at the end of the tenancy. The tenant entered into evidence a text exchange between the landlord and the tenant which states:

- Landlord: Hello [tenant P.K.], I checked upstairs, you didn't clean anything. If you want you can come and clean it yourself. You have 3 days, or we can call a cleaning company and whatever that costs we can cut from the damage deposit. Thankyou.
- Tenant: Ok we will do it tomorrow.
- Tenant: I did the sweeping and mop

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Loss of rental income

The landlord testified that the tenants gave approximately one week's verbal notice to end the tenancy. Tenant A.K. testified that the landlord verbally told him to move out and that he complied with that request. Neither party entered any documentary evidence regarding how this tenancy ended. I find that the parties have each provided an equally probable but different explanation of how this tenancy came to and end. I therefore find that the landlord has not met the burden on a balance of probabilities and his claim for loss of rental income in the amount of \$1,700.00 fails. The landlord's claim for lost rental income is dismissed without leave to reapply.

Cleaning costs

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the condition of the

subject rental property, joint condition inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Based on the testimony of both parties I find that the landlord breached sections 23 and 35 of the *Act* by failing to complete move in and out condition inspection reports.

The landlord testified that the subject rental property was dirty at the end of the tenancy. Tenant A.K. testified that the subject rental property was clean. The tenant entered into evidence a text message in which tenant P.K. states that she returned to the subject rental property and cleaned it. The landlord did not provide photographs of any dirty areas and did not complete a move out condition inspection report. I find that the landlord has not proved that the subject rental property was left dirty contrary to section 37 of the *Act*. As the landlord has not met the onus, the landlord's claim for the cleaning cost is dismissed without leave to reapply.

Security deposit

Tenant A.K. testified that he served the landlord with his forwarding address via registered mail on March 3, 2021, contrary to his testimony in the previous hearing. The landlord testified that he did not receive the tenants' forwarding address.

I find that there is no documentary or other evidence before me connecting the March 3, 2021 registered mail tracking number to mail sent to the landlord's address, such as a copy of the addressed envelope with the registered mail label attached, or any written proof of service document. I find that tenant A.K. has failed to satisfy me, on a balance of probabilities, that the tenants' forwarding address was served or deemed served on the landlord as required by the *Act*. In addition, I find the inconsistency in tenant A.K.'s testimony regarding the tenants' forwarding address to reduce the credibility of that testimony.

As the provision of a valid forwarding address is a requirement of section 38 of the *Act*, I find that the landlord is not yet required to return the tenants' security deposit to the tenants.

I note that section 39 of the *Act* states:

Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

As the landlord was not successful in this application for dispute resolution I find that the landlord is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The landlord'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: November 09, 2021

Residential Tenancy Branch