



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction, Preliminary and Procedural Matters-

This hearing was re-convened as the result of the landlord's successful Application for Review Consideration.

This dispute began as a result of the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The tenant applied for:

- a return of their security deposit; and
- compensation for a monetary loss or other money owed.

On June 8, 2021, an arbitrator granted a part of the tenant's application and issued the tenant a monetary order for \$1,200, for the return of a portion of the monthly rent paid for December 15-31, 2020. That Decision is incorporated herein by reference and should be read in conjunction with this decision.

The landlord failed to attend the original hearing, which was attended by the tenant and his assistant.

The landlord filed the Application for Review Consideration which resulted in a Decision by another arbitrator with the Residential Tenancy Branch (RTB), on June 15, 2021, granting the landlord a new hearing on the tenant's original application for dispute resolution. That Decision is incorporated herein by reference and should be read in conjunction with this decision.

Under section 82(3), following this new hearing, I may confirm, vary, or set aside the original Decision and order.

At this new hearing, the tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing.

The landlord submitted that he received the tenant's application, but had not received any evidence from the tenant. The landlord said that he had sent all his evidence to the tenant. The tenant gave confusing information about service of his evidence. I note that the tenant made their original application for dispute resolution on February 3, 2021, and a significant portion of the tenant's additional evidence in support of their claim was filed with the RTB online portal on September 19, 2021, well after the original hearing of June 7, 2021.

The tenant did not raise any issue regarding the landlord's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the monetary compensation claimed against the landlord?

Background and Evidence

The written tenancy agreement showed a tenancy start date of September 1, 2020, a fixed term through August 31, 2021, monthly rent of \$2,400, due on the 1st day of the

month, and a security deposit of \$1,200 being paid by the tenant to the landlord. Filed in evidence was a copy of the written tenancy agreement.

The tenancy ended on December 15, 2020, the day the tenant vacated the rental unit.

The tenant submitted that because there was a problem with the rental unit, he asked the landlord about terminating the tenancy agreement early. The landlord agreed to terminate the contract, and asked the tenant to pay the monthly rent for December 2020. The tenant submitted that the landlord then asked him to move out by December 15, 2020, and he did so. According to the tenant, the landlord moved new tenants in on the same day, December 15, 2020. For this reason, the tenant submitted that he is entitled to recover one-half the monthly rent paid for December 2020, or \$1,200.

The tenant submitted a copy of a one-page "contract termination", signed by both parties.

The tenant submitted that the landlord returned \$1,100 from the tenant's security deposit on December 15, 2020, and withheld \$100. The tenant claims he is entitled to double the withheld amount, or \$200, as the landlord did not have permission to keep any amount from the security deposit.

The previous arbitrator in the original Decision of June 8, 2021, dismissed the tenant's claim for \$200, with leave to reapply, due to insufficient evidence that the tenant had provided the landlord with his written forwarding address.

The tenant submitted that he gave the landlord his written forwarding address by registered mail on June 15, 2021, and the landlord failed to return the \$100.

The tenant provided the Canada Post tracking number at the hearing, as well as providing picture evidence of the letter containing the forwarding address, the envelope and proof of registered mail containing the tracking number. This evidence, however, was filed on September 19, 2021, not with the original application or prior to the hearing on June 7, 2021.

The landlord submitted that the new tenants did not move into the rental unit until January 1, 2021, and referred to the documentary evidence of the new tenancy agreement, showing a tenancy start date of January 1, 2021. The landlord denied receiving double rent for the time period of December 15-31, 2020.

The tenant said that he knows for sure the landlord had other tenants move into the rental unit on December 15, 2020, as the building management told him the landlord had two moves booked that day, for the elevator use.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As to the tenant's claim of \$1,200 for recovery of the partial rent paid for December 15-31, 2021, under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ended on August 31, 2021.

What this means is the tenant is responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In the case before me, I accept that the tenancy ended earlier than the fixed-term of August 31, 2021, and I find the tenant therefore breached the Act and the written tenancy agreement. While the landlord agreed that the tenant could move out by December 15, 2020, the landlord still expected to receive the monthly rent for December 2020, according to the documentary evidence submitted by the tenant.

The contract termination form submitted by the tenant shows that the tenant was to pay the full amount of rent for December 2020, and to work to help the landlord find new tenants for January 1, 2021. If the tenant did so, the original tenancy agreement will be

ended by December 30, 2020. I do not find the tenant was relieved of his obligation to pay the full amount of rent for December 2020.

I find the tenant submitted insufficient evidence that the new tenants moved into the rental unit on December 15, 2020. I find any statement made by the management of the building is unsupported, as this is hearsay, or second-hand evidence, and therefore, not reliable.

For the above reasons, I find the tenant was required to pay the monthly rent for December 2020, under the terms of the written tenancy agreement, and due to the tenant's insufficient evidence that new tenants moved in on December 15, 2020, I **dismiss** the tenant's claim for \$1,200.

On this basis, I **set aside** the portion of the original Decision of the arbitrator dated June 8, 2021, pursuant to section 82(3) of the Act, granting the tenant a monetary claim of \$1,200. I also **set aside** the monetary order for \$1,200. The monetary order is now of no force or effect and is no longer valid and enforceable.

Additionally, as the original arbitrator found the tenant submitted insufficient evidence to prove he provided his written forwarding address to the landlord prior to his application on February 3, 2021, and there was no evidence presented at the new hearing that the tenant provided his written forwarding address until June 7, 2021, I **confirm** the original Decision of the arbitrator granting the tenant leave to reapply for the return of his security deposit.

As this is not a new application by the tenant, rather a hearing on the original application and evidence, I therefore cannot consider the additional evidence submitted on September 19, 2021.

Conclusion

The original Decision granting the tenant a monetary award of \$1,200 for a return of the monthly rent for December 15-31, 2020, and a monetary order of \$1,200 have been set aside. The monetary order is now of no force or effect.

The part of the original Decision granting the tenant leave to reapply for a return of his security deposit is confirmed.

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 1, 2021

Residential Tenancy Branch