



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan a realestate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants were represented by an agent (the "tenants"). The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenants' notice of dispute resolution and evidence and served no materials of their own. Based on the testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing some typographic errors in the tenants' application was noted and corrected. The corrected names of the parties are used in the style of cause for this decision and accompanying order. The tenants also noted typographic errors in the amount of the monetary claim sought. As correcting typographic and arithmetic

errors is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the tenants' monetary claim from \$3,475.00 to \$3,750.00.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee for the application?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenants submit that this tenancy began on July 1, 2021. Monthly rent was \$2,500.00 payable on the first of each month. A security deposit of \$1,250.00 was paid and is still held by the landlord. The tenants were never provided a copy of a written tenancy agreement. The tenants dealt with agents of the corporate landlord who provided banking information for Interac transfers and accepted payments of cash at their place of business.

The tenants paid a total of \$3750.00 to the landlord comprised of the security deposit of \$1,250.00 and rent of \$2,500.00 by an Interac e-transfer of \$3,000.00 and cash payment of \$750.00. The tenants submit a screenshot of an e-transfer of \$3,000.00 as evidence of payment. The tenants explained that the payment was made from a friend's bank account as they are recent immigrants who had not yet set up a bank account at that time. The recipient of the funds is identified as "Tent" and the note provides the payment is for the dispute address. The tenants say that they were not provided with any receipt for the payment of \$750.00 despite requesting the landlord issue a receipt.

The tenants took possession of the rental unit on July 1, 2021 and found the suite to be in poor repair with soiled furnishings and in unsanitary condition. On July 2, 2021 the tenants found workers had entered the rental unit without prior notice or permission. The workers said they were unaware that the rental unit had been rented. Video recordings of the condition of the suite and the tenants' interaction with the workers were submitted into evidence.

The tenants expressed their concern about the lack of security and unauthorized entry into the rental unit to the agent of the landlord in writing by text messages and was informed that they could end the tenancy if they were unhappy. The tenants attended at the corporate landlord's business address and provided a forwarding address in writing on July 4, 2021. The landlord did not return the tenant's security deposit nor did they refund any portion of the rent for July 2021 despite earlier representations by the landlord's agent that they would do so.

The tenants submitted screenshots of some text message conversation with the landlord's agent into evidence. The recipient of the tenant's message is not named but the phone number to which the tenants sent messages is a number that the tenants submit is associated with the corporate landlord in their online postings.

The tenants submit that in their present application they are seeking a return of the security deposit for this tenancy and the overpayment of rent for the month of July 2021 as the tenancy ended on July 4, 2021.

The landlord disputes that there was any tenancy or other contractual relationship with the tenants and says they have no knowledge of any of the events about which the tenants provided evidence.

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 the present case the landlord disputes that there was any tenancy agreement with the tenants and professes to have no prior knowledge of the tenants, the events or the claim. The tenants had little documentary evidence as they testified that the landlord refused to provide them with a written tenancy agreement or receipts but provided cogent, consistent and detailed testimony.

Based on the evidence I find that there was an enforceable tenancy agreement between the tenants and the respondent landlord. I am satisfied with the level of details provided by the tenants in their testimony and submissions which is supported in the limited documentary materials available. I find the tenants to be credible witnesses providing cogent, believable accounts which are in line with what a reasonable person would do under similar circumstances.

I find the landlord's blanket denial of knowledge of a testimony to be contradicted in the documentary evidence and have little air of reality. I find the absence of a signed tenancy agreement between the parties is a result of the landlord's contravention of section 13(1) of the *Act* requiring tenancy agreements to be prepared in writing rather than evidence that no agreement exists.

I find that there was a tenancy agreement between the parties with monthly rent of \$2,500.00 and security deposit of \$1,250.00. I accept the submission of the tenants that they paid a total of \$3,750.00 to the landlord by Interac transfer and a cash payment. I am satisfied with the evidence including the copy of transfer confirmation and the testimony providing an explanation of the circumstances surrounding the payment.

I accept the evidence of the tenant that the rental unit and its furnishings were soiled, marred and in a condition below that which would be reasonable for occupation. I further accept the evidence that the landlord allowed workers to trespass onto the property without authorization or notice. Based on the evidence I find the landlord has failed to comply with material terms of a tenancy agreement to provide and maintain residential property in a state of decoration and repair making it suitable for occupation and ensuring exclusive possession of the rental unit. I accept the undisputed evidence of the tenants that they provided written notice to the landlord to rectify these deficiencies and the landlord failed to take action instead encouraging them to end the tenancy. As such, I find there was a basis for the tenant to issue notice to end the tenancy pursuant to section 45(3) of the *Act*.

I accept that the tenants gave written notice and the tenancy ended on July 4, 2021. I further accept that the tenants paid rent in full for the month of July 2021 in the amount of \$2,500.00. As the tenancy ended on July 4, 2021 I find there is an overpayment of \$2,177.42 based on four days occupation of the suite to which the tenants are entitled. I therefore issue a monetary award in that amount.

I accept the evidence of the tenants that they provided a forwarding address to the landlords on July 4, 2021 and did not authorize any deductions from their security deposit.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

As the landlord has not returned the security deposit in full nor have they applied for authorization to retain the deposit, I find the tenants are entitled to a monetary award in the amount of \$2,500.00, double the value of the security deposit for this tenancy.

As the tenants were successful in their application they are also entitled to recover the filing fee from the landlord.

I note that I have grave concerns regarding the conduct of the landlord and their multiple contraventions of the requirements of the *Act*. The landlord has contravened section 13(1) of the *Act* requiring tenancy agreements to be prepared in writing, and now relies upon the absence of documentary evidence created by their own contravention to suggest that no tenancy agreement exists and they are shielded from the tenants' application.

Because I am concerned with the landlord's contravention, I am sending a copy of this decision to the Branch Management team who will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials to the Compliance and Enforcement Unit.

This separate unit of the Branch is responsible for administrative penalties that may be levied under the *Act*. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of this dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this decision.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$4,777.42. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: January 21, 2022

Residential Tenancy Branch