



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNSDS-DR

Introduction

This hearing dealt with cross-applications filed by the parties. On June 18, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*.

On August 14, 2021, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 13-minute teleconference. The Landlord was informed that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term, and he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

The Landlord advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on July 16, 2021 (the registered mail tracking number is noted on the first page of this Decision). He stated that he never received this package back, so he assumed that the Tenant received it. Based on this undisputed testimony, I am satisfied that the Notice of Hearing and evidence package has been deemed

received by the Tenant five days after it was mailed. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

As the Tenant did not attend this hearing, the Tenant's Application is dismissed without leave to reapply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on February 1, 2020 and ended when the Tenant gave up vacant possession of the rental unit on June 30, 2021. Rent was established at \$1,700.00 per month and was due on the first day of each month. A security deposit of \$850.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

He stated that the Tenant provided a forwarding address in writing on or around June 14, 2021.

The Landlord is seeking compensation in the amount of **\$1,700.00** for July 2021 rent because the Tenant phoned him in June 2021 to inform him that she was moving out on June 30, 2021. She did not provide any written notice, of one full month, to end her tenancy as required by the *Act*. As such, the Landlord suffered a rental loss for July 2021.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Tenant provided a forwarding address in writing to the Landlord on or around June 14, 2021 and that the Landlord made the Application to claim against the security deposit on June 18, 2021. As the Landlord made an Application to claim against the security deposit within 15 days of approximately June 14, 2021, I am satisfied that the Landlord complied with the requirements of the *Act* with respect to the handling of the security deposit at the end of the tenancy. As such, the doubling provisions of this Section do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, there is no dispute that the tenancy reverted to a month-to-month tenancy after the fixed term ended on January 31, 2021. Furthermore, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on June 30, 2021. Sections 44 and 45 of the *Act* set out how tenancies end and also specify that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlord receives the notice, and 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. In essence, the Tenant must have given one, whole month's notice in writing to end the tenancy. So, if the Tenant wanted to end her tenancy on June 30, 2021, she would have been required to give her written notice in May 2021. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the undisputed evidence, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss. Given that the Landlord had been provided with verbal notification that the Tenant would be giving up vacant possession, I am satisfied that the Landlord was put in a position where it would have been impossible to rent the unit for July 1, 2021 as the Tenant did not give any proper written notice to him to end her tenancy.

Consequently, I am satisfied that the Tenant is responsible for the rental loss that the Landlord is seeking compensation for. As such, I grant the Landlord a monetary award in the amount of **\$1,700.00**. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this claim.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
July 2021 rent	\$1,700.00
Security deposit	-\$850.00
Total Monetary Award	\$850.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$850.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the

Tenant 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.

The Tenant'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: January 11, 2022

Residential Tenancy Branch