



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: MNDCL-S, MNRL-S, FFL
For the Tenants: MNSDS-DR, FFT

Introduction

The Landlord filed an Application for Dispute Resolution by direct request on August 3, 2021, seeking compensation for unpaid rent from the Tenant. Additionally, they applied for reimbursement of the Application filing fee. The matter was scheduled to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 15, 2022.

The Tenant filed their Application by direct request on October 8, 2021, seeking return of the paid security deposit, and reimbursement of the Application filing fee.

The Tenant’s Application was joined to that of the Landlord, and the matter was scheduled to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) for February 15, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony. Each party confirmed they received notice of the other’s Application and the prepared documentary evidence in advance. On this basis, the hearing proceeded as scheduled.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The parties entered into a tenancy agreement on June 30, 2021, as shown in the Landlord's evidence. This set the start of the tenancy for July 1, 2021, on a month-to-month basis. The Tenant was set to pay \$2,500 per month on the first of each month. They paid a security deposit of \$1,250. The tenancy agreement in the Landlord's evidence on page 5 sets out how either party may end the tenancy.

The Tenant stated their move-in date was July 2. The Landlord stated they received the rent for July.

The Tenant presented that the Landlord forced this agreement prior to their opportunity to see the rental unit and make the determination if it was suitable for their needs. They submit they did not have the chance to do a walk-through at the rental unit; however, the Landlord refused to do this and insisted on July rent paid and the agreement signed. Referencing the tenuous state of finding rental units in the province, the Tenant stated they paid the rent amount, the security deposit, and signed the tenancy agreement.

Upon their move-in on July 2, they did not find the rental unit suitable. They notified the Landlord of this, and according to the Tenant the Landlord wanted to help them to find something more suitable. The Tenant called to the Residential Tenancy Branch to find out what they could do in this situation. The Branch advised the Tenant to write a letter informing the Landlord they wished to end the tenancy, and "choose whatever date".

The Tenant provided a letter in person to the business address of the Landlord on July 8. Both parties provided a copy of this letter in their evidence. The Tenant notified the Landlord of "cancelling the lease agreement . . . as of July 31, 2021." They cited the reasons of promised repairs not provided after their family member's initial visit prior to their move-in. They also cited the Landlord's inability to meet at the rental unit until July 2, with the agreement signed and rent paid prior to that. At that meeting, the Tenant

noted the lack of repairs and no laundry room, and then asked for the agreement to be cancelled. According to the Tenant, the Landlord refused this request.

In the hearing the Landlord presented that they do not rent units that are “sight unseen” and do not force anyone to sign an agreement without some viewing. In their version, the Tenant had viewed the unit via a family member; however, at the initial meeting on July 2 the Tenant was not happy.

The Landlord claims \$2,500, for the August 2021 rent. This is based on the short notice from the Tenant on July 8, 2021.

The parties met for a final inspection meeting on July 31. A document of that meeting is in the Landlord’s evidence. The Tenant described how the Landlord noted the Tenant’s vacancy date and listed their claim to the security deposit. The Tenant did not sign this agreement.

Reciprocally, the Tenant claims for the return of the security deposit amount, \$1,250. The Tenant noted they provided their forwarding address in their July 8 letter. They request double the amount because the Landlord is holding the deposit, past the allowed time limit, without cause.

Analysis

I refer to the *Act* in order to determine each party’s rights and obligations in this dispute. The *Act* s. 1 gives pertinent definitions:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

“tenant” includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

A tenancy agreement confers rights and obligations, by s. 16:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this situation I find a tenancy agreement was in place between the parties. The Tenant signed the agreement. Whether they did so without a preview visit of the rental unit is inconsequential to the legal rights and obligations that are conferred with a tenancy agreement. Payment of the security deposit, such as it happened here, is an element of *consideration* which is fundamental to any contract. What is binding in this present scenario is the Tenant signing the agreement, as shown in the evidence, on June 30, 2021.

Turning to the *Act*, a Tenant has the ability to end a tenancy within strict timelines, as set out in s. 45. The subsection (1) provides that a Tenant may end the month-to-month agreement on a date that is: not earlier than one month after the date the Landlord receives the notice; and is the day before the rent payment date. This is what is stated in the tenancy agreement which is binding on the parties.

With reference to s. 16, I find the tenancy agreement conferred rights and obligations. Along with this comes the duty to give a proper notice to end the tenancy. Here, the Tenant specified the date July 31, giving that notice to the Landlord on July 8. This does not meet the requirements of s. 45(1)(a); therefore, the correct legal date defaults to August 31, 2021. The Tenant shall pay \$2,500 to the Landlord for the month of August rent, based on their breach of the *Act* and the tenancy agreement.

The Tenant has claimed for the return of the security deposit, and doubled that claim because they feel the Landlord is withholding the deposit without reason.

The *Act* s. 38(1) states:

- (1) . . .within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
 - (c) repay. . . any security deposit . . .to the tenant
 - (d) make an application for dispute resolution claiming against the security deposit

Further, s. 38(6) provides that

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit . . .

Here, s. 38(1)(a) applies, being the *later* of the two dates – this is the date the tenancy ended on July 31, 2021. The Landlord filed their Application on August 3, 2021; this is within 15 days after the end of the tenancy. The Landlord has complied with s. 38(1); therefore, there is no doubling of the security deposit amount to the Tenant.

The Act s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here has established a claim of \$2,500. After setting off the security deposit of \$1,250, there is a balance of \$1,250. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,250 in satisfaction of their claim. This is an application of s. 72(2)(b) of the Act.

The Landlord was successful in their Application; therefore, I find they are entitled to recover the \$100 Application filing fee. The Tenant was not successful; therefore, there is no reimbursement of this fee to them.

Conclusion

Pursuant to s. 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,350. I provide the Landlord with this Monetary Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the Act.

Dated: February 16, 2022

Residential Tenancy Branch