



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL-S, MNDL-S, FFL**

MNSDS-DR, FFT

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Act*.

The landlord applied for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- An order for the return of a security deposit the landlord is holding without cause, by direct request pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing, and the tenant attended the hearing with her co-tenant. The tenant asked that her application be amended to include the co-tenant, present at the hearing, who also signed the tenancy agreement. I reviewed the tenancy agreement and determined that the co-tenant should be a party to these proceedings

and added the co-tenant pursuant to section 64(3)(c) of the *Act*. Both tenants' names appear on the cover page of this decision.

As all parties were in attendance, service of documents was confirmed. Each party acknowledged service of the others' Notice of Dispute Resolution Proceedings package and stated they had no issues with timely service of documents. Both parties were ready to proceed with the hearing of their respective claims.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Both parties confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation?

Can the landlord retain the tenants' security deposit, or should it be returned to the tenants?

Can either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity, and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The fixed, one-year tenancy began on April 1, 2015, becoming month to month at the end of the fixed term. Rent was set at \$1,700.00 payable on the 15th day of each month. A security deposit of \$850.00 was collected from the tenants which the landlord continues to hold. No pet damage deposit was collected. A condition inspection report was done with the tenants at the commencement of the tenancy and was provided as evidence for this hearing.

The tenancy ended when the landlord sold the rental unit, a single-family house. The landlord gave the tenants a 2 Month Notice to End Tenancy for Landlord's Use on March 31, 2021, with an effective date of June 15, 2021. The landlord testified that the new owners took possession of the rental unit on July 1 or July 2, 2021. The parties agree that the landlord has already compensated the tenants with the equivalent of one month's rent for serving them with the notice to end tenancy for landlord's use. In his evidence, the landlord states that the last payment he received from the tenants was on April 20, 2021.

The landlord testified that on approximately May 13, 2021, the tenants sent him a text message advising that they would be moving out on May 15th. The landlord stated that he has experienced tenants advising him that they would be moving out on certain days then didn't follow through on several occasions, causing issues for him. The landlord testified that he did not schedule a date for another condition inspection report to be done on May 15th because he wasn't sure they would be gone by then. On May 13th, the landlord came by the rental unit and saw that they had mostly vacated the unit but left some of their belongings behind, requiring removal.

The landlord testified that since the tenants had left and he had no forwarding address for them, he did the move-out condition inspection report without them. He doesn't know when he sent it to the tenants, but thinks it was sent via registered mail with the evidence package for this hearing. The landlord acknowledges receiving the tenant's forwarding address dated July 12, 2021, by registered mail. The landlord did not specify the date he received it.

On the monetary order worksheet, the landlord seeks compensation for cleaning in the amount of \$252.00; cleaning, repairs, and replacement of items for \$1,850.00; and \$1,715.00 for the tenant's moving without giving the landlord one month's notice.

The landlord testified that when he sold the rental unit to the prospective purchasers, the condition of the rental unit was just as the purchasers had seen it when viewing the unit prior to purchasing it. The landlord testified that he never spoke with the purchasers himself, however the landlord's realtor told him he needed to remove and replace the carpets in the bedroom, replace a broken garage door opener, repair a broken compressor in the garage, repair closet doors and dispose of garbage left by the tenants. An estimate for this work in the amount of \$1,850.00 was provided, however the landlord acknowledges he did not remove or replace the bedroom carpets at the cost of \$800.00. The landlord testified that he had the garage door opener fixed, the

compressor fixed, and the closet door fixed but didn't provide any invoices for the work done.

The landlord testified that "the new buyers had in the contract the house needed to be cleaned by a professional cleaning company" which forced the landlord to hire one to deep clean the house at a cost of \$252.00. The landlord provided a copy of an invoice from a cleaning company in that amount; however, the landlord did not provide a copy of the contract of purchase and sale document showing where the landlord was required to professionally clean the rental unit for the purchasers.

Lastly, the landlord seeks a month's compensation of rent from the tenants because the tenants put him in a bad spot as his house was not occupied for two and a half months and insurance requires someone living in the house on a regular basis. The landlord argues that he was unable to derive rent from the tenants between the time they vacated the unit and the time the purchasers took over ownership of the rental unit.

The tenants gave the following testimony. The tenant PV sent a text to the landlord on May 3, 2021, advising the landlord that they had found a place to live after being served with the landlord's notice to end tenancy. Originally, they were supposed to stay until the beginning of June, however their new landlord advised the tenants that it would be possible for them to leave their old rental unit and move in to the new one in mid-May since their current rent was payable on the 15th of the month. The tenant BE called the landlord to advise they would be out by May 15th, and the tenants never gave their notice to end tenancy in writing to the landlord.

The tenants acknowledge that the landlord did a "walkthrough" with them on May 18th, the day they moved out, but on that day the landlord did not bring the condition inspection report completed on move-in for the inspection. The tenants testified that the landlord agreed that the condition of the unit showed reasonable wear and tear after a tenancy of seven years. The tenants acknowledge that they did not clean the carpets at the end of the tenancy but that the landlord agreed that the carpets needed to be replaced. The closet doors were broken during the tenancy; however, the compressor didn't work properly, and the tenants told the landlord about that.

The landlord testified that the reason he didn't have the condition inspection report with him on May 18th was because on that date, he was at the rental unit cleaning up when the tenants advised they could come by and drop off the keys.

Lastly, the tenants state in their application that they served their forwarding address to the landlord by registered mail on July 19, 2021. The tenants did not provide the tracking number for the mailing or the Canada Post receipt showing the date and time of mailing.

Analysis – tenant's claim

Turning first to the tenant's application for a return of the security deposit. Security deposits are governed by section 38 and 38.1 of the *Act*.

For me to award the tenant a doubled security deposit, the landlord must fail to return the security deposit or repay the tenant's security deposit within 15 days of receiving the tenant's forwarding address. The tenants did not provide a form RTB-41, proof of service of forwarding address, so I turn to their application (form RTB-12T-DR), which indicates they sent the forwarding address to the landlord by registered mail on July 19, 2021. The landlord did not dispute this date of service and I accept July 19, 2021, as the date the landlord received the forwarding address of the tenants.

The landlord filed his application for dispute resolution on August 5, 2021, seventeen (17) days after receiving the tenants' forwarding address. As a result, I find the landlord has breached section 38 of the *Act*. I am statutorily required under section 38.1 to order the landlord return the tenants' security deposit. I order the tenant's security deposit of \$850.00 be doubled to **\$1,700.00** and awarded to the tenants.

Analysis – landlord's claim

Next, I turn to the landlord's application. He seeks compensation pursuant to sections 7 and 67 of the *Act*.

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at part C:

COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

[the 4-point test]

The landlord testified that under the contract of purchase and sale, the landlord was required to professionally clean the rental unit. However, during the hearing the landlord acknowledged that the purchasers of the rental unit bought the house in the exact same condition it was in when the first looked at it. Further, the landlord did not provide a copy of the contract of purchase and sale that allegedly requires the landlord to professionally clean the rental unit. On a balance of probabilities, I believe the purchasers of the rental unit accepted the condition of the house they purchased was “as-is” on the day they viewed it and that no further cleaning was required. While the landlord may have cleaned the house prior to the new owners taking possession of it, I am not satisfied he was contractually required to do so. Further, I have viewed the photos of the unit upon move-out supplied by the landlord and I find the tenants complied with section 37(2) of the *Act* by leaving the rental unit reasonably clean and undamaged except for reasonable wear and tear. I dismiss the landlord’s claim for “cleaning services” of \$252.00, line 1 of the monetary order worksheet.

Line 2 of the monetary order worksheet is derived from an estimate provided to the landlord from a renovation contractor. The landlord acknowledges that he did not replace the bedroom carpet. Nor did the landlord provide any invoices to satisfy me that he had any of the following items in the estimate done: disposing of garbage, relacing a garage door opener, repairing a compressor, and repairing closet doors. As the onus is on the applicant to provide sufficient evidence to prove his case, I find the landlord has failed to do so and I dismiss the renovations claim, line 2 of the monetary order worksheet.

Lastly, the landlord seeks 1 month's compensation for not being given proper notice of the tenants' choice to vacate the rental unit early. The evidence of both parties indicates the tenancy ended on May 18, 2021, 28 days before the effective date stated on the landlord's notice to end tenancy. The parties agree that the landlord has paid the tenants the equivalent of one month's rent for serving them with the notice to end tenancy for landlord's use.

Section 50 allows a tenant to end a periodic (month to month) tenancy by giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the date of a landlord's notice to end tenancy for landlord's use. The tenant is required to pay the landlord rent up to the effective date of the written notice they give to the landlord. The tenant testified that she sent the landlord a text message on May 3rd advising that they would be moving out on June 1st, however the tenant did not provide a copy of this text. Nor was the subsequent phone call to the landlord by the co-tenant, advising that the move-out date would be May 15th ever followed up by written confirmation.

I find that the tenants failed to give the landlord at least 10 days' written notice to end the tenancy prior to the effective date stated on the landlord's notice to end tenancy of June 15th. As such, I find the tenants were required to pay rent until the effective date stated in the notice to end tenancy, or June 15th. I accept the last payment for rent received by the landlord was for the period spanning April 15 to May 14, 2021. The tenants were therefore required to pay rent for the period from May 15 to June 14, 2021 and failed to do so. Since the landlord has already compensated the tenants for serving them with the 2 Month Notice to End Tenancy for Landlord's Use, the tenants are still required to pay rent from May 15 to June 14, 2021. The landlord is entitled to compensation in the amount of **\$1,715.00**.

The decision to order the payment of filing fees is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, neither party's filing fee will be recovered.

The difference between the tenant's award of \$1,700.00 and the landlord's award of \$1,715.00 is \$15.00. I award the landlord a monetary order in that amount.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$15.00.

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: February 22, 2022