



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants 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. Landlord RS confirmed they represented all named applicants.

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 parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the deposits for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

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.

This fixed-term tenancy began on November 1, 2020 and was scheduled to end on October 31, 2021. The monthly rent was \$2,500.00 payable on the first of each month. A security deposit of \$1,250.00 and pet damage deposit of \$1,250.00 were collected at the start of the tenancy and are still held by the landlords. No condition inspection report was prepared at any time for this tenancy.

There was a previous decision under the file number on the first page of this decision on May 27, 2021. The previous hearing dealt with the tenants' application seeking authorization to end the fixed-term tenancy prior to the fixed term. In their decision the arbitrator wrote:

The tenants wish to have authorization to end the tenancy prior to the end of the fixed term that expires on October 31, 2021. The provisions for the tenant ending a fixed term tenancy agreement are set in s. 45(2). There is no earlier end to the tenancy agreement due to this provision. With their submissions and evidence in this hearing, the tenants have not shown that the landlord failed to comply with a material term of the agreement, which otherwise would allow the tenants to end earlier, as per s. 45(3).

The tenants' proposal to unilaterally end the tenancy and receive the full deposits is an avoidance of the provisions of the Act. There is no allowance for an end to the tenancy in the manner which the tenants propose. Additionally, the dispensation of the security and pet damage deposits is governed by s.38, and I do not grant authorization for their full return prior to the end of this tenancy.

The only avenue open to the tenants is by mutual agreement to end the tenancy, as provided in s.44(c). The return of deposits does not form part of that agreement, and as stated above that is governed by s. 38. Also note the tenants may still be responsible for rent up until the end of the fixed term if the rental unit remains vacant because of this, with no new tenants. I note that in the hearing the tenants pledged their commitment to assist the landlord in finding new tenants.

The landlords submit that there was no mutual agreement between the parties to end the tenancy and the tenants vacated the rental unit on June 30, 2021. The tenants gave a forwarding address in writing by a letter dated July 27, 2021. The tenants have not given written authorization that the landlord may retain any portion of the deposits for this tenancy.

The parties agree they took some steps in order to find a new occupant for the rental unit. The tenants submit that a new occupant was identified and was scheduled to take possession of the rental unit on July 1, 2021. The tenants say that the landlord failed to take reasonable steps and mitigate their losses by accepting a new occupant for that date. The landlord testified that there was a potential occupant for July 1, 2021 but they declined to enter a tenancy agreement and so they found a new occupant to commence August 1, 2021 at a monthly rent of \$2,600.00.

The landlord seeks a monetary award in the amount of \$2,500.00, the equivalent of the rent for July 2021.

The landlord further submits that the dryer of the rental unit and the washrooms required repairs and maintenance. The landlord seeks a monetary award in the amount of \$735.00 for the cost of work. The landlord submitted some handwritten notes they claim are receipts for the work performed by third parties.

Analysis

Section 24 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not complete a copy of a condition inspection report in accordance with the regulations.

I accept the undisputed evidence of the parties that no condition inspection report was prepared for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit.

I accept the undisputed evidence of the parties that the tenants have provided a forwarding address in writing on July 27, 2021 and have not authorized the landlord to make any deductions from the deposit.

Accordingly, I find the tenants are entitled to a monetary award in the amount of \$5,000.00, double the value of the security and pet damage deposit for this tenancy.

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 absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence in support of the landlord's claim for damages. I find the handwritten notes submitted by the landlord and referred to as receipts to be of little probative value as they are poorly scrawled on scraps of paper and have little resemblance to a professional receipt showing that work was performed and charged. I do not find the landlords' submissions to be sufficient to meet their onus of proof and dismiss this portion of their application accordingly.

I accept the evidence of the parties that this fixed-term tenancy was ended prior to its term and the landlord incurred some losses as a result.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present circumstance, I accept the evidence that the landlord took some steps to mitigate their losses by finding a new occupant as soon as possible. I accept the evidence of the parties that there were multiple applications from potential occupants and that the landlord attempted to enter an agreement with one specific party for July 1, 2021. I accept the evidence of the landlord that the potential occupant ultimately declined to enter an agreement.

I am satisfied with the evidence of the landlord that the steps taken were reasonable and appropriate under the circumstances. I find that the landlord acted in a professional manner vetting applicants in order to find an appropriate new occupant. I do not find the landlord to have been too stringent in their requirements or so exacting that they were being unreasonable.

Based on the evidence, I find that the tenants breached the fixed-term tenancy agreement by ending it before its full term. I find the landlord took reasonable measures in an attempt to mitigate their losses but incurred some loss despite their actions. I therefore find that the landlords are entitled to a monetary award in the amount claimed of \$2,500.00.

As the landlords were not wholly successful in their application, I decline to issue an award for recovery of the filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,500.00 on the following terms:

| Item | Amount |
|---------------------------------------|--------------------------------------|
| Recovery of Double Security Deposit | $(\$1,250.00 \times 2) = \$2,500.00$ |
| Recovery of Double Pet Damage Deposit | $(\$1,250.00 \times 2) = \$2,500.00$ |
| Less Monetary Award to Landlord | -\$2,500.00 |
| TOTAL | \$2,500.00 |

The landlords must be served with this Order as soon as possible. Should the landlords 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: February 22, 2022

Residential Tenancy Branch