



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 14, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

L.D. and D.D. (the “Agents”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

L.D. testified that the hearing package and Landlord’s evidence were sent to the Tenants at a forwarding address provided by the Tenants. L.D. testified that the packages were sent by registered mail. The Landlord submitted registered mail receipts with Tracking Number 911 and Tracking Number 899 on them. I looked the tracking numbers up on the Canada Post website. The website shows the package with Tracking Number 911, sent to Tenant R.H., was sent September 03, 2021 and unclaimed. The website shows the package with Tracking Number 899, sent to Tenant H.H., was sent September 03, 2021 and delivered September 08, 2021.

Based on the undisputed testimony of L.D., the registered mail receipts and the Canada Post website information, I am satisfied the Tenants were served with the hearing package and evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the “*Act*”). Tenant R.H. cannot avoid service by failing to pick up registered mail and is deemed pursuant to section 90(a) of the *Act* to have received the package September 08, 2021. Based on the Canada Post website information, I find Tenant H.H. received the package September 08, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$900.00 in compensation for loss of half a month’s rent for August of 2021.

A written tenancy agreement was submitted. The tenancy started March 01, 2020. L.D. testified that the tenancy was for a fixed term ending September 30, 2020 and then became a month-to-month tenancy. Rent at the start was \$1,800.00 per month due on the first day of each month. The Tenants paid a \$900.00 security deposit.

L.D. testified as follows.

Rent was \$1,825.00 at the end of the tenancy.

The tenancy ended July 30, 2021.

The Tenants provided their forwarding address to the Landlord by text August 04, 2021.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Tenants did not agree to the Landlord keeping the security deposit.

The parties did move-in and move-out inspections.

The Landlord received notice from the Tenants on July 08, 2021 ending the tenancy for July 31, 2021. The Tenants moved out of the rental unit July 31, 2021. The Tenants did not pay August rent.

The rental unit was posted for rent July 08 or 09, 2021 on a rental website for \$1,800.00 per month in rent. The Landlord showed the rental unit immediately. The rental unit was re-rented for August 15, 2021 and the new tenancy agreement is in evidence.

The Landlord submitted the following documentary evidence:

- A July 08, 2021 text from the Tenants ending the tenancy July 31, 2021
- A July 10, 2021 text from L.D. to the Tenants about showing the rental unit
- The new tenancy agreement starting August 15, 2021 with rent being \$1,800.00
- Monetary Order Worksheet
- The tenancy agreement

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I accept the undisputed testimony of L.D. that the parties did move-in and move-out inspections and therefore I find the Tenants did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord is claiming for loss of rent, not for damage to the rental unit.

I accept the undisputed testimony of L.D. that the tenancy ended July 30, 2021.

I accept the undisputed testimony of L.D. that the Landlord received a forwarding address from the Tenants by text August 04, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit in full or file a claim with the RTB against it. Here, the Landlord had 15 days from August 04, 2021. The Application was filed August 14, 2021, within time. I find the Landlord complied with section 38(1) of the *Act* and was entitled to claim against the security deposit.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 45(1) of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Based on the text message and undisputed testimony of L.D., I accept that the Landlord received notice from the Tenants on July 08, 2021 ending the tenancy for July 31, 2021. The Tenants' notice was not effective until August 31, 2021 pursuant to sections 45(1) and 53 of the *Act*. The Tenants remained responsible for paying rent up until August 31, 2021.

I find the Tenants breached section 45(1) of the *Act* by ending the tenancy early.

I accept the undisputed testimony of L.D. that the Tenants moved out of the rental unit July 30, 2021 and did not pay rent for August of 2021. Based on the new tenancy agreement and undisputed testimony of L.D., I accept that the Landlord could not re-rent the unit until August 15, 2021. I find it reasonable that the Landlord re-rented the unit for August 15, 2021 after receiving notice July 08, 2021. I find the Landlord lost half a month's rent due to the Tenants' breach.

I accept the undisputed testimony of L.D. that rent was \$1,825.00 at the end of the tenancy and note that the Landlord is only seeking \$900.00 for loss of rent for half of August of 2021.

I accept that the Landlord mitigated their loss by posting the unit for rent immediately after receiving the Tenants' notice. I find the July 10, 2021 text supports that the unit was posted immediately. I also find the new tenancy agreement supports that the unit was posted for rent at a lower rent amount than the Tenants were paying at the end of the tenancy.

Given the above, I find the Landlord is entitled to \$900.00 as compensation for loss of rent for half of August 2021 pursuant to section 67 of the *Act*.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,000.00. The Landlord can keep the \$900.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$100.00.

Conclusion

The Landlord is entitled to \$1,000.00. The Landlord can keep the \$900.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$100.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: March 09, 2022

Residential Tenancy Branch