



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 05, 2022 (the “Application”). The Landlord applied as follows:

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

The Landlord appeared at the hearing with their agent J.L. The Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. The Tenants confirmed receipt of the hearing package and Landlord’s evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. 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?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	4 months loss of rent	\$9,600.00
2	Move out fee	\$100.00
	TOTAL	\$9,700.00

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started July 16, 2021, and was for a fixed term ending January 31, 2022. Rent was \$2,400.00 per month due on the first day of each month. The Tenants paid a \$1,200.00 security deposit. The tenancy agreement includes an addendum with term 5 which states, "The Tenants agree to pay Move-In and Move-Out fee."

The parties agreed the tenancy ended September 30, 2021.

The parties agreed the Tenants did not provide the Landlord with a forwarding address in writing.

The parties agreed they did a move-in inspection.

J.L. testified that a move-out inspection was not done, and the Tenants were not provided two opportunities to do a move-out inspection.

The Tenants testified that they did a move-out inspection with the Landlord.

#1 4 months loss of rent \$9,600.00

J.L. testified as follows. The Tenants only provided verbal notice around the end of September of 2021 that they were moving out of the rental unit at the end of the month. The Tenants moved out September 30, 2021. The tenancy was a fixed term tenancy. The Landlord tried to re-rent the unit as soon as they knew the Tenants were moving out. The Landlord posted the unit for rent on social media and asked friends about potential tenants. The unit was posted for the same rent amount of \$2,400.00. The Tenants were cooperative with the Landlord in relation to re-renting the unit. The unit was not re-rented until the end of January of 2022. The Landlord is seeking loss of rent for October of 2021 to January of 2022. October and November were bad months to

re-rent the unit due to the pandemic. The Landlord could only deal with certain potential tenants due to a language barrier. People do not move leading up to Christmas.

The Tenants testified as follows. They gave the Landlord notice on August 15, 2021, that they were moving September 30, 2021. They gave the Landlord verbal notice and notice by text message. The Landlord did not ask the Tenants for written notice. The Landlord brought more than six groups of potential tenants through the rental unit to look at it. They gave the Landlord enough time to re-rent the unit. They cooperated with the Landlord to re-rent the unit and gave the unit back in a good, clean condition.

#2 Move out fee \$100.00

J.L. testified as follows. The Tenants did not pay the move-out fee of \$100.00 as required by the strata bylaws. The move-out fee is noted in the addendum to the tenancy agreement. The Tenants were told the move-out fee was \$100.00 and paid the move-in fee of \$100.00.

The Tenants testified that they did not know about a move-out fee and did not pay a move-in fee.

Documentary evidence

The Landlord submitted the following documentary evidence:

- Strata bylaws
- 10 Day Notice for October rent
- Monetary Order Worksheet
- Tenancy Agreement
- Condition Inspection Report on move-in

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 *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties and the Condition Inspection Report on move-in, 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 for damage to the rental unit and the Landlord has not claimed for damage to the rental unit.

Based on the testimony of both parties, I accept that the tenancy ended September 30, 2021.

Based on the testimony of both parties, I accept that the Tenants did not provide the Landlord with a forwarding address in writing.

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 or claim against it. Here, the Tenants did not provide the Landlord with a forwarding address in writing and therefore section 38(1) of the *Act* was not triggered. The Landlord was entitled to claim against the security deposit when the Application was filed.

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.

#1 4 months loss of rent \$9,600.00

Section 45 of the *Act* states:

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant

gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section **must comply with section 52** [form and content of notice to end tenancy].

(emphasis added)

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy **must be in writing** and **must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...

(e) when given by a landlord, be in the approved form.

(emphasis added)

There is no issue that this tenancy was a fixed term tenancy ending January 31, 2022. The Tenants were not permitted to end the tenancy before January 31, 2022, pursuant to section 45(2) of the *Act* unless section 45(3) of the *Act* applied. There is no suggestion here that section 45(3) of the *Act* applied. I find the Tenants breached the tenancy agreement and section 45(2) of the *Act* by ending the tenancy before January 31, 2022.

The parties disagreed about when the Tenants gave notice ending the tenancy to the Landlord. J.L. testified that the Tenants gave notice around the end of September 2021. The Tenants testified that they gave notice August 15, 2021. There is no further evidence before me about when the Tenants gave notice.

I accept that the Tenants gave notice around the end of September 2021. I find it unlikely that the Tenants gave notice verbally and by text message August 15, 2021, because I would expect the text message to be submitted in evidence by the Tenants and the Tenants have not submitted such a text message. Further, verbal notice and notice by text message does not comply with sections 45(4) or 52 of the *Act* and therefore the Landlord did not have to accept these forms of notice.

I accept that the Landlord could not re-rent the rental unit for October of 2021 when the Tenants gave improper notice around the end of September 2021. I find it accords with common sense that it would have taken the Landlord some time to re-rent the unit. However, I do not accept that it took the Landlord four months to re-rent the unit because I find this to be a very lengthy period and unlikely. The Landlord did not submit documentary evidence of their attempts to re-rent the unit or to show that there was some compelling reason the unit was not re-rented until February of 2022. In the absence of further evidence, I am not satisfied the Landlord took reasonable steps to re-rent the unit and therefore mitigate their loss.

Given the above, I award the Landlord \$2,400.00 being loss of rent for October of 2021.

#2 Move out fee \$100.00

I find the Tenants knew about the move-out fee because it is noted in the addendum to the tenancy agreement. There is no issue that the Tenants did not pay the move-out fee because the parties agreed on this. Pursuant to term 5 of the addendum to the tenancy agreement, the Tenants were required to pay the move-out fee. The strata bylaws show the move-out fee was \$100.00. I find the Tenants are responsible to pay this and award the Landlord \$100.00.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	4 months loss of rent	\$2,400.00
2	Move out fee	\$100.00
	TOTAL	\$2,500.00

The Landlord can keep the \$1,200.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,300.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$2,500.00. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$1,300.00. 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: May 04, 2022

Residential Tenancy Branch