



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: MNSD, MNDCT
For the Landlord: MNDCL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on November 1, 2021 seeking compensation from the Tenant, and reimbursement of the Application filing fee. The matter was scheduled for a hearing originally on May 26, 2022.

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on November 21, 2021 for a return of the security deposit, and compensation for their monetary loss. That separate hearing was scheduled for hearing on June 3, 2022.

I joined these two applications because they concern the same tenancy and the same aspect of that tenancy that ended in 2021. I convened two hearings with the parties on May 26 and again on June 3, 2022.

Both parties attended the hearings. I explained the process to the parties at the outset of the May 26 hearing. Both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – notification of hearings, and disclosure

The Landlord stated in the first hearing they served notice of the hearing, as well as their evidence, to the Tenant via registered mail. The Tenant confirmed receipt of the same; therefore, I find the Landlord served notice of the hearing as required by s. 59(3) of the *Act*.

Reciprocally, the Tenant stated they served notice of their scheduled hearing (June 3), and their prepared evidence to the Landlord via registered mail. The tracking information they provided in their evidence shows the mail being sent on November 28 and delivered to the Landlord on December 1. In the second hearing, the Landlord stated they did not receive this; however, I find the Tenant completed service of their own Notice for Dispute Resolution, including their evidence, as shown in the record. The Tenant's evidence receives full consideration.

After the first hearing on May 26, I advised the parties by letter dated May 27 that the parties must meet again, as scheduled, on June 3. In that interim period, the Landlord submitted more evidence; in the second hearing they stated they did not disclose this to the Tenant. Given the timelines for parties' evidence to be submitted as per the *Residential Tenancy Branch Rules of Procedure*, and especially the fact that the evidence was not disclosed to the Tenant, I give this piece no consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 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 compensation for monetary loss or other money owed, pursuant to s. 67 of the Act?

Is the Tenant entitled to a return of the security deposit, pursuant to s. 38 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 Tenant submitted a copy of the tenancy agreement the parties signed on April 27, 2021. This set a tenancy starting date of May 1, for a fixed term of one year. The Tenant was set to pay \$3,550 per month, and a utility fee of \$128. The Tenant paid a security deposit of \$1,775.

According to the Landlord, the Tenant signed the agreement after they inspected the rental unit. They Tenant “confirmed it was in good tenantable conditions.” The Tenant paid the first month rent of \$3,550 and the security deposit. In the Landlord’s written account, the Tenant on the following day went to the Landlord’s own home, with a written request for a full refund of the money they paid. This was for the Tenant’s alleged reason of an unclean property, and “suspected rat infestation.” On April 30, 2021 the Landlord sent a pest control company; that company found no pests.

In their evidence, the Landlord included the Tenant’s letter to them dated April 28, 2021. This has the Tenant’s statement that “we want to inform you that we are breaking out [of] the residential tenancy agreement with you because of the enormous mice problem. . .” Further: “This tenancy agreement is frustrated.” The Tenant requested a full refund fund of that first month rent, the utility fee, and the security deposit, for \$5,453. The record in their evidence shows that they paid this amount to the Landlord.

The Landlord also included a copy of the initial Condition Inspection Report, jointly signed by the parties on April 27, 2021. The Landlord also included the invoice from the pest control inspection which provided that they found droppings; however, “no live visual during time of inspection.” The Landlord also questioned why the Tenant did not notice any problems with a three-hour inspection undertaken on April 27.

The Landlord considered these grounds to be unreasonable, and the Tenant’s request for a refund was not acceptable. For their Application, the Landlord claims the entirety of the first month’s rent, for \$3,550. Because they were not able to rent the unit for the following three months, they claim to keep the security deposit, for \$1,775. The Landlord’s total claim is \$5,325.

The Tenant responded to the Landlord’s Application (via their own Application) to say the Landlord instead moved to sell the house shortly after. They submit the Landlord did not acquire new tenants because they instead sold the house only 2 months later.

The Tenant stated they noticed all sorts of problems when they arrived to clean the rental unit on April 28, deciding not to stay by noon on that day. They claim for the entire first month of rent they paid (\$3,550), the return of the security deposit (\$1,775), and the extra utility charge they paid (\$128).

The parties had a prior hearing in this matter. On November 1, 2021 that Arbitrator ordered the Tenant to serve their forwarding address to the Landlord in writing. I accept the Tenant's evidence that they did so that October 29, after the hearing, in person to the Landlord. The Landlord filed this current Application on November 1. After they served their forwarding address to the Landlord and did not receive the security deposit in return, the Tenant filed this Application on November 21, 2021.

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;

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 instance, I find a tenancy agreement was in place between the parties. What the Tenant discovered about a potential pest problem does not invalidate the tenancy agreement. What is binding in this present scenario is the Tenant signing the agreement, as shown in the evidence, on April 27, 2021. This was a fixed-term tenancy as set out clearly in that agreement.

Turning back to the *Act*, a tenant has the ability to end a tenancy within strict timelines; for a fixed-term tenancy this is set out in s. 45(2): not earlier than one month after the date the landlord receives the notice.

More broadly, to be successful in a claim for monetary compensation for loss the Landlord has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the Landlord must provide sufficient evidence to establish any alleged loss stems from an existing tenancy.

I find the evidence shows the tenant paid a security deposit amount of \$1,775. Additionally, the agreement shows the agreement continues on a month-to-month term until ended in accordance with the *Act*. The signed tenancy agreement is a legally binding contract and is explicit that the *Act* applies.

With these factors in mind, I find there was a tenancy agreement in place between the parties. I find the parties had such an agreement, and the landlord-tenant relation was established. This is bolstered by the procurement of a security deposit.

With reference to s. 16, I find the agreement conferred rights and obligations. Along with this comes the Tenant's duty to give a proper notice to end the tenancy. There is no evidence the Tenant gave proper notice to the Landlord within the timelines set by the *Act*. Because of this, the Landlord suffered a loss without the Tenant in place for at least the month of May. With regard to the four points set out above, I find from this that a loss to the Landlord exists, and it was from the Tenant's violation of the *Act*.

There is no evidence the Landlord sought to obtain any new tenant in a timely manner; therefore, I find there was no minimizing of their claim here, and they are not entitled to anything beyond what would normally occur with a proper one-month notice to end the tenancy in place from the Tenant. Further, I find that the sale of the rental unit occurred in relatively short order, with no evidence from the Landlord they sought to replace the tenants as soon as possible. The Landlord claimed the entirety of the security deposit for this portion of their loss; however, I dismiss this the Landlord's claim to keep the security deposit amount.

I find the Tenant did not notify the Landlord of ending the tenancy as specified in the *Act*, with the *Act* governing this landlord-tenant relationship started when they signed the tenancy agreement. I award the Landlord the full amount of rent for the month of May: \$3,550 as claimed. I dismiss the Tenant's claim for the return of this same amount for the reasons set out above: their improper notification to the Landlord of the end of the tenancy.

The Tenant submitted that the tenancy agreement was frustrated; however, I find it was not. The agreement was not contingent upon the absences of pests in the rental unit; similarly, it is not inconceivable that the Tenant could have ascertained the presence (or potential) of pests with a reasonable amount of close inspection prior to signing the tenancy agreement. The presence of some remnant of pests, not defined in terms of recentness, and not positively confirming the existence of pests, is not an unforeseeable event that made fulfilment of the contract impossible.

I find the evidence shows the Tenant paid an extra charge of \$128 for that first month. This was not claimed by the Landlord; therefore, I order its return to the Tenant in this situation where there was no actual utility usage in the month of May.

Because the Landlord was moderately successful in their Application, I award them \$50 for reimbursement of the Application filing fee.

For the security deposit of \$1,775 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 if a landlord does not comply, they must pay double that amount to the Tenant.

In the prior hearing between these parties, the Arbitrator ordered the Tenant to serve their forwarding address to the Landlord. I find they did so on October 29, 2021, and that start the 15-day timeline for the Landlord to file their claim in motion. The Landlord filed their subsequent Application on November 1, and this is within the 15-day timeline as clearly set out in the *Act*. For this reason, they are not to pay double that amount; however, above I find the Landlord has no claim to justify keeping that security deposit amount. The Tenant is legally entitled to the return of that security deposit in full; that amount is \$1,775.

The Landlord is holding the security deposit, and accepted payment for the full month of May's rent and the utility fee. That total amount is \$5,453. The Landlord must return the security deposit (\$1,775) and the utility fee (\$128) to the Tenant, totalling \$1,903. Subtracting \$50 for the Landlord's Application fee award leaves an amount of \$1,853 to be paid by the Landlord to the Tenant.

Conclusion

Pursuant to s. 38 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,853. I provide the Tenant with this Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file it in the Small Claims Division of the Provincial Court and where it will be enforced as an Order of that Court.

The matter of this tenancy is concluded, and any further claims to the initial rent amount, the utility fee, and/or the security deposit, will be treated as *res judicata* by the Residential Tenancy Branch. This is the rule of law which provides that a final decision is conclusive as to the rights of the parties and constitutes a bar to a subsequent application involving the same claim.

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: June 6, 2022

Residential Tenancy Branch