



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT, MNDCL-S, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On September 11, 2021, the Tenants made an Application for a Dispute Resolution Proceeding seeking a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 30, 2022, the Landlords made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for March 8, 2022. The original hearing was adjourned as per an Interim Decision dated March 8, 2022. The final, reconvened hearing was set down for July 18, 2022 at 11:00 AM.

All three Tenants attended the final, reconvened hearing. Both Landlords attended the final, reconvened hearing, with M.Q. attending as their translator. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was

prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

All parties confirmed service of the Notice of Hearing documents at the original hearing.

As well, Tenant J.C. advised at the original hearing that some of their documentary evidence was served with the Notice of Hearing packages, and that they did not serve their additional evidence or their digital evidence. Landlord M.Z. confirmed that they only received the Tenants' documentary evidence served with the Notice of Hearing packages. Based on this undisputed testimony, I have accepted only the Tenants' documentary evidence that was served with the Notice of Hearing packages and will consider it when rendering this Decision. All of the Tenants' other documentary and digital evidence will be excluded and not considered when rendering this Decision.

M.Z. advised at the original hearing that the Landlords' documentary evidence was served to the Tenants by registered mail on February 1 and 11, 2022, and J.C. confirmed that this was received. Based on this undisputed testimony, I have accepted all of the Landlords' documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double their security deposit?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy was supposed to start on July 15, 2020 for a fixed length of time until July 14, 2023; however, the Tenants never fully moved into the rental unit for July 15, 2020. Rent was established at an amount of \$2,800.00 per month and was due on the first day of each month. A security deposit of \$1,400.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenants are seeking compensation in the amount of **\$2,800.00**, or double their security deposit, because the Landlords did not comply with the *Act*. J.C. advised that they provided their forwarding address in writing to the Landlords by sending a letter through Canada Post on July 17, 2020. This was sent to the address that the Landlords listed on the tenancy agreement as their address for service, and this address was the same as the rental unit. He referenced the documentary evidence submitted to support this position. As well, he stated that Tenant Y.Z. witnessed this letter being put in the mail on July 17, 2020. Y.Z. solemnly affirmed to witnessing J.C. do this.

M.Z. advised that they never received this letter. He stated that they received the Tenants' new address when they received the Tenants' Notice of Hearing documents on November 4, 2021. He confirmed that they understood the Tenants' Application was for a return of double the security deposit, and that they did not return the deposit or claim against it within 15 days of receiving the Tenants' new address. He submitted that the reason they took so long, after receiving this new address, to make their own Application was because this was their first time going through a dispute. As well, he stated that it was near the end of the year, that COVID played a factor, and that they did not have time to prepare.

M.Z. advised that they are seeking compensation in the amount of **\$2,800.00** because the Tenants signed a fixed term tenancy agreement, but did not honour it. He stated that the Tenants received the keys on June 23, 2020, and that they started to move in. However, the Tenants contacted Landlord F.L. on July 6, 2020, and J.C. informed her that they could not move in due to his daughter's alleged allergic reaction to a paint smell in the rental unit. He stated that she asked the Tenants if they wanted to delay moving in and they did not receive a response. He submitted that the parties agreed that the Landlords would then re-rent the unit, so the Tenants returned the keys, and he re-listed the rental unit online. He testified that the Tenants came to the Landlords' home and the rent money paid for July 15 to July 31, 2020 was returned to the Tenants.

He stated that the Tenants never gave any written notice to end their tenancy, and that they were able to find new tenants for August 15, 2020.

J.C. confirmed that there was a discussion on July 6, 2020 with the Landlords, but the Landlords took the keys to the rental unit away from him. He made several submissions about how it was his belief that M.Z. was not telling the truth. He then contradictorily stated that he gave the keys to the rental unit to the Landlords on July 6, 2020 because they asked for the keys back, and asked him to move out his property from the rental unit. He then confirmed that they did not move in due to the paint smell, and that they did not give any written notice to end their tenancy.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the totality of the evidence before me, I am satisfied that the Tenants, more likely than not, provided their forwarding address in writing to the Landlords on July 17, 2020, and sent this to the only address provided to them by the Landlords on the tenancy agreement. Given that the Landlords listed their address for service as the same address as the dispute address, it would not surprise me that they did not receive this, despite M.Z.'s assertion that his daughter lived there. As such, this was deemed received on July 22, 2020, and the Landlords were required to return the deposit in full or claim against it within 15 days of this date. As the Landlords did not do either, I am satisfied that the Landlords failed to comply with the *Act* and the doubling provisions apply to the security deposit. Therefore, I grant the Tenants a monetary award in the amount of $\$1,400.00 \times 2 = \mathbf{\$2,800.00}$.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In addition, I note that Policy Guideline # 5 outlines the Landlords' duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlords claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year starting on July 15, 2020, yet the tenancy effectively ended because the Tenants never fully moved in and gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

There are few ways under the *Act* that the Tenants could break a fixed term tenancy without consequences. One would be if there was a signed mutual agreement to end the tenancy. The other would be if there was a breach of a material term of the tenancy, and if the Tenants then asked the Landlords in writing to correct this breach within a reasonable period of time. Moreover, in that warning letter, the Tenants would stipulate

that they would be ending the tenancy if the Landlords did not correct this breach of a material term within that time period.

There is no evidence before me of a mutual agreement to end the tenancy in writing, nor was there a breach of a material term sequence of events as described above. Furthermore, there is no evidence that the Tenants provided any written notice to end their tenancy.

While J.C. claimed that the Landlords took the keys from him, I do not find that this makes much logical sense as it is not clear to me how the Landlords would physically do this. As well, I note that J.C. then contradicted his own testimony and stated that he handed the keys to the Landlords. This causes me to question J.C.'s credibility. Moreover, even if I were to believe that the Landlords physically wrestled the keys back from J.C., it is not clear to me why he did not apply for an Order of Possession of the rental unit if it was his intention to live there and the Landlords somehow prevented them from doing so. In my view, given a review of all of the evidence before me, it is clear that the Tenants did not want to move into the rental unit simply because of issues that they had concerns with. Based on a balance of probabilities, I find it more likely than not that J.C. returned the keys because of this dissatisfaction.

Given that the Tenants signed a tenancy agreement binding them to the terms of that agreement, I find their justification for not fulfilling their obligations are wholly unacceptable reasons for validly ending this tenancy without consequences. They elected to sign this agreement of their own volition, and if there was a problem with the alleged smell of paint, the Tenants should have informed the Landlords in writing that there was a problem, and asked them to fix it within a reasonable period of time. If this was not corrected, the remedy for the Tenants would have been to apply for Dispute Resolution to request a repair Order forcing the Landlords to fix the issue, and then potentially forcing the Landlords to compensate the Tenants accordingly for any loss of use of the rental unit. Of course, the burden of proof would be on the Tenants to prove that there was a problem in the first place, and that they suffered a loss because of it.

Ultimately, I am satisfied that the Tenants were not permitted to break the fixed term tenancy early in the manner with which they did. As such, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlords could have suffered a rental loss. In addition, I am also not satisfied that the Tenants gave the Landlords sufficient notification that they were ending the tenancy and not honouring the tenancy agreement. Given that the Landlords only discovered that it was the Tenants' intention to break the fixed term tenancy on or around July 6, 2020, I am satisfied that the Landlords were given little notice to start advertising to re-rent the unit.

As the Landlords had been given minimal notification that the Tenants would be ending the fixed term tenancy early, I am satisfied that the Landlords were put in a position that it would have been likely impossible to rent the unit for July 15, 2020, and it would have been difficult for them to re-rent the unit even for August 1, 2020. I am satisfied by the evidence presented that the Landlords made sufficient attempts to re-rent the unit as quickly as possible after finding out that the Tenants would not be occupying the rental unit, and that they were able to do so on August 15, 2020.

Consequently, I am satisfied that the Tenants are responsible for the rental loss that the Landlords are seeking compensation for. As such, I grant the Landlords a Monetary Order in the amount of **\$2,800.00**.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their Application.

As the Landlords were successful in their claim, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Double security deposit	\$2,800.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,900.00

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Rental loss for July 15 to August 15, 2020	\$2,800.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,900.00

Conclusion

As these awards offset each other, neither party is provided with a Monetary Order.

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: July 19, 2022

Residential Tenancy Branch