



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDCT, FFL, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlords applied on January 4, 2022 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 10, 2022 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's applications and evidence packages. The Parties confirm that no recording device is being used for the hearing.

Issue(s) to be Decided

Are the Landlords entitled to the monetary amount claimed?

Are the Landlords entitled to retain the security deposit?

Is the Tenant entitled to the monetary amount claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on July 29, 2021 on a fixed term to end July 29, 2022. Rent of \$1,200.00 was payable monthly. No move-in inspection with report was conducted. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. The Landlord received the Tenant's forwarding address with the Tenant's notice to end tenancy. On December 13, 2021 the Tenant gave notice to end the tenancy (the "Notice") for December 31, 2021. The Notice contains the Tenant's forwarding address. The Tenant moved out of the unit on December 31, 2021. No rent was paid for January 2022.

The Landlord states that the unit required some repairs to bring it to a good condition for showing. The Landlord states that the unit was advertised on social media and another tenant was obtained for a tenancy starting February 1, 2022. The Landlord claims unpaid rent for January 2022.

The Tenant states that the Landlord's failure to clear and sand the driveway caused the Tenant to require new winter tires. The Tenant claims the costs of \$1,293.40. The Tenant states that they provided a receipt for this amount. It was noted at the hearing that no receipt could be found in the Tenant's evidence provided to the Residential Tenancy Branch (the "RTB"). The Landlord states that no receipt was provided in the evidence package from the Tenant.

The Tenant states that problems with their car slipping on the long-sloped driveway started near the end of November 2021. The Tenant states that they informed the Landlord of this problem on or about December 1, 2021. The Tenant states that at this time their car had winter tires that had been used for two previous seasons. The Tenant states that after December 3, 2021 when the Tenant had new winter tires put on her car there was no further slipping on the driveway. The Tenant states that there was heavy snow in December 2021 and that between December 1 and 31, 2021 the Landlord cleared the snow about 6 times and the Tenant's car slid about 12 times during this

period. The Tenant states that ice was present under the snow, that the Landlord never sanded the driveway, and that the Landlord should have sanded the driveway due to the snow. The Tenant states that they informed the Landlord each time they slid. The Tenant confirms that no witness statements were provided.

The Landlord states that the driveway is 250 feet long and shared with homes alongside the driveway. The Landlord states that they only own the first 50 feet at the top of the driveway and have an easement for the remainder of the driveway. The Landlord states that they look forward to the snow fall as they enjoy plowing the driveway and do this for all the homes. The Landlord states that it only snowed lightly about 3 or 4 time in December 2021 and that the driveway was plowed each time. The Landlord states that sand was unnecessary as the slope was on a southern exposure that would dry the asphalt. The Landlord states that there was no ice on the driveway. The Landlord states that when the Tenant mentioned their car sliding, the Tenant made no reference to the driveway and only made reference to three other spots getting into town that the Tenant had problems with. The Landlord states that they never saw the Tenant's car slide down the driveway.

Analysis

Section 45(2) of the Act provides that 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.

Section 53(1) of the Act provides that 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. Section 53(2) of the Act provides that 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. As the tenancy was a fixed term tenancy and as the Tenant's notice sets out an effective end of the tenancy that is not the end date of the fixed term, I find that the effective date of the Notice is deemed to be changed to the fixed end date of July 29, 2022.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. As the Tenant was still under a tenancy agreement for January 2022 and based on the undisputed evidence that the Tenant did not pay rent for this month, I find that the Landlord has substantiated an entitlement to **\$1,200.00**. I also consider that the Landlord took reasonable steps to obtain a new renter for February 1, 2022, therefore mitigating the loss caused by the Tenant's breach of the fixed term. As the Landlord's claim has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,300.00**. Deducting the security deposit plus zero interest of **\$600.00** leaves **\$700.00** owed to the Landlords.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. The Tenant's evidence of not having slid after December 3, 2021 with the new tires is inconsistent with the Tenant's subsequent evidence that their car slid 12 times during that month. The Tenant provided no supporting evidence of the weather history for their area during December 2021. I therefore overall prefer the Landlord's evidence that there were only a few instances of light snow, that the Tenant only informed them of sliding on a road elsewhere, and that no receipt for the tire costs was provided by the Tenant. For these reasons I find on a balance of probabilities that the Tenant has not substantiated their

claim for compensation. As the Tenant's claim has not been successful, I find that the Tenant is not entitled to recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The Tenant's application is dismissed.

I order that the Landlords retain the **deposit** and interest of \$600.00 in partial satisfaction of the claim and I grant the Landlords an order under Section 67 of the Act for the balance due of **\$700.00**. If necessary, this order may be filed in the Small Claims 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: August 17, 2022

Residential Tenancy Branch