



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant CS confirmed they represented all named respondents.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and confirmed they have not served any evidence of

their own. Based on their testimonies I find the tenants duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed-term tenancy agreement began on March 1, 2021 and was scheduled to end on February 28, 2024. Monthly rent was \$4,000.00 payable on the first of each month. A security deposit of \$2,000.00 and pet damage deposit of \$500.00 were collected at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenants gave notice to end the tenancy on November 28, 2021 and the tenancy ended December 31, 2021. The parties agree that there was a rental arrear of \$2,000.00 as the tenants failed to pay the full rent for December 2021.

The landlord claims that the rental unit required cleaning and work after the tenancy ended. The landlord testified about broken water pipes and submitted some photographs in support of their application. The landlord seeks a monetary award of \$1,075.00.

The landlord says that they were unable to find a new occupant for the rental suite until March 15, 2022. The landlord seeks a monetary award for rental income losses in the amount of \$4,000.00.

Analysis

Section 24 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not complete a copy of a condition inspection report in accordance with the regulations.

I accept the undisputed evidence of the parties that no condition inspection report was prepared for this tenancy. The landlord is in the business of accepting payment for providing housing and ought to be aware of the requirements of the *Act* and the consequences when they choose to breach the *Act*. In the absence of a proper condition inspection report prepared by the parties in accordance with the *Act* I find the landlord has extinguished their right to retain the security and pet damage deposit for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit. Therefore, I find the tenants are entitled to a monetary award in the amount of \$5,000.00, double the value of the security and pet damage deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that the tenants failed to pay the full rent for the month of December 2021 as required under the signed tenancy agreement. Accordingly, I find the landlord is entitled to a monetary award in the amount of \$2,000.00, the arrear for this tenancy.

In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence in support of the landlord's claim for damages. I find the photographs and testimony to be insufficient to establish that the damages the landlord now claims are attributable to the tenancy. I find the landlord's evidence to be insufficient to meet their onus of proof and dismiss this portion of their application accordingly.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In this case, the parties agree written notice was provided to the landlord on November 28, 2021. The landlord submits that they began advertising the suite immediately online, both as a single unit and as two separated units but were unable to find a new occupant until March 15, 2022.

I am not satisfied with the paucity of the landlord's evidence that they took reasonable measures to mitigate their rental income losses. The landlord submitted no copies of online advertisements, provided no information on the number of potential applicants they screened and little information of steps taken to find a new occupant. Given the ongoing rental housing crisis in the province I find it unreasonable that the landlord was unable to find a new occupant for four months after being given notice by the tenants.

I find that any rental income losses incurred by the landlord are not attributable to the tenants but attributable to the landlord's failure to take reasonable steps. Consequently, I dismiss this portion of the landlord's application without leave to reapply.

As the landlord was somewhat successful in their application they are entitled to recover their filing fee from the tenant.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,900.00 on the following terms:

Item	Amount
Return of Double Security Deposit (2 x \$2,000.00)	\$4,000.00
Return of Double Pet Damage Deposit (2 x \$500.00)	\$1,000.00
Less Monetary Award to Landlord	-\$2,100.00
TOTAL	\$2,900.00

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: August 16, 2022

Residential Tenancy Branch