



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, FF

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for a monetary order for unpaid rent, authority to keep the tenants' security deposit to use against a monetary award, and to recover the cost of the filing fee.

The landlord's agent (landlord) and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenants confirmed receipt of the landlord's evidence and the tenants confirmed not filing evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to retain the tenants' security deposit and pet damage deposit to partially or completely satisfy a monetary award, and to recover the cost of the filing fee?

Background and Evidence

According to the written tenancy agreement filed in evidence, this tenancy began on May 1, 2021, for a fixed term through April 30, 2022, monthly rent for the rental unit was of \$1,730 and parking was \$100, for a total monthly rent of \$1,830, due on the 1st day of the month.

The tenants paid a security deposit of \$915 and a pet damage deposit of \$915. Filed into evidence was a copy of the written tenancy agreement.

Additionally, the tenants and landlord entered into monthly parking agreement for an additional parking spot for \$65 per month, beginning November 1, 2021.

The landlord claims the total monthly rent obligation was \$1,895.

The landlord retained the tenants' security deposit and pet damage deposit, having made this claim against it.

The landlord's monetary claim as shown in his filed evidence is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Prorated January rent for 23 days	\$1,432.93
2. Filing fee	\$100.00
TOTAL	\$1,532.93

As to the monetary claim for loss of rent revenue, the landlord submitted that the tenants were obligated to pay rent through the end of the fixed term, in this case April 30, 2022. Instead, the tenants gave written notice on November 21, 2021, that they were vacating the rental unit effective December 15, 2021.

The landlord submitted the tenants paid the monthly rent for December 2021, in full, but the monthly rent cheque for January was returned due to insufficient funds.

The landlord said that the tenants who moved into the rental unit were found on January 5, 2022, but the landlord had to do their due diligence in credit and reference checks.

The landlord said in their part of the province it is more difficult to find someone to move in during the winter and they were lucky to find these tenants. The landlord said when the tenants vacated, they posted the rental unit on their website portal.

In response, the tenant submitted that they did not just skip out on the tenancy, because the employer of tenant ML closed, forcing them to relocate to another city where the employer had another location.

The tenant said that she continued to call after the tenancy to check on the status of the rental unit and was told by many landlord representatives that there were no available apartments and their wait lists were full.

ML said that they had already given the landlord permission to keep their security deposit and they did not understand why the application was necessary.

ML also said they actually vacated the rental unit on December 3, 2021.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Residential Tenancy Policy Guideline #16 notes, “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.” This *Guideline* continues by explaining, “the party who suffered the damage or loss can prove the amount of or value of the damage or loss.”

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In other words, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, there was no dispute that the tenants breached the terms of their written tenancy agreement by ending the tenancy before April 30, 2022, even if the tenants had good reason to do so due to employment relocation. I find the tenants are liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord’s obligation to minimize their loss.

In this case, the tenants did not pay rent for the month after the tenancy ended, or January 2022.

In this case, I find the landlord submitted sufficient evidence to show that the tenants owed the monthly rent for January 2022, under the terms of their written tenancy agreement, but did not pay.

I find it reasonable that the landlords would be unable to find new tenants starting in the middle of the month, or December 2021, and had secured new tenants by January 5, 2022. I find it reasonable that even if the landlord had a waiting list, as claimed by the tenants, the landlord would do background checks on the new tenants. For this reason, I find on a balance of probabilities that the landlord mitigated their loss, as required by the Act.

I therefore find that the landlord has established a monetary claim of **\$1,432.93**, for the loss of rent revenue for January 1-23, 2022 ($\$1,895 \text{ monthly rent obligation} \times 12 \text{ months} \div 365 \text{ days} \div 23 \text{ days for January 2022} = \$1,432.93$).

Due to their successful application, I grant the landlord recovery of their filing fee of **\$100**, bringing the landlord's total monetary award to **\$1,532.93**.

Using the offsetting provisions contained in section 72 of the Act, I order the landlord to retain the tenants' security deposit of \$915 and pet damage deposit of \$915 in full satisfaction of their monetary award, and order the landlord to return the balance of the two deposits, or \$297.07.

To give effect to this order, I grant the tenants a monetary order (Order) in the amount of **\$297.07**, the balance of their security deposit and pet damage deposit.

The landlord must be served with this Order if enforcement is necessary. 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.

Conclusion

The landlord's application for monetary compensation is fully successful. The landlord has been granted a monetary award of **\$1,532.93** and ordered to retain the tenants' security deposit and pet damage deposit of \$915 each in full satisfaction.

The landlord has been ordered to return the balance of the two deposits, or **\$297.07**, and the tenants have been granted a monetary order in that amount.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 28, 2022

Residential Tenancy Branch