



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes MNRL MNDCL FFL

Introduction

The landlord seeks compensation from its former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

A hearing was first held on June 16, 2022. At that hearing both parties attended, were affirmed, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained. The matter was adjourned (for the reasons explained in my Interim Decision of June 16, 2022) to February 21, 2023. Both parties attended and were reaffirmed.

Issue

Is the landlord entitled to compensation?

Background and Evidence

In reaching this decision, while I have considered most of the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

It should be noted that the parties were required, as per my direction in the Interim Decision, to provide copies of any evidence upon which they intended to rely to the Residential Tenancy Branch within 15 days of the date of the hearing. The tenant did not submit her evidence until February 13 and February 14, 2023, outside the minimum period of time required under the Interim Decision. As such, this evidence will not be admitted or considered in reaching this decision.

The tenancy began on March 31, 2021 and it was structured as a fixed term tenancy ending on November 30, 2022. However, the tenant vacated the rental unit on October 26, 2021.

Monthly rent (which included a parking stall valued at \$50.00) was \$1,415.00 and the tenant paid a \$682.50 security deposit. The security deposit has remained in trust with the landlord pending the outcome of this application. There is in evidence a copy of the written tenancy agreement.

On October 6, 2021 the tenant provided written notice that they were ending the tenancy effective October 16, 2021. The tenant moved out of the rental unit on October 26, 2021. The parties completed a condition inspection report on October 26, 2021 and included in the report is the tenant's forwarding address. The landlord filed this application for dispute resolution on November 18, 2021.

The landlord's particulars state that the tenant did not provide proper notice to end the tenancy and as such the landlord is seeking compensation in the amount of one month's rent to cover the landlord's loss of rental income in the amount of \$1,415.00 for the month of November 2021. While the landlord made efforts to find a new tenant, they eventually secured a new tenant who took occupancy on December 1, 2021.

The tenant testified that she "put in a lot of effort" in trying to find someone who could become a new tenant. And the tenant commented that she found it hard to believe that nobody was found to be a new tenant until after she vacated the rental unit.

In addition, the landlord seeks \$25.00 in compensation for a \$25.00 NSF fee incurred for the month of July 2021. A ledger submitted into evidence by the landlord reflects the fee. The tenant disputed this claim and testified that she was "pretty sure" that she paid this fee.

The landlord seeks \$40.00 in cleaning costs but amended this to \$30.00 during the hearing. The tenant did not dispute this aspect of the landlord's claim. As an aside, while there is a reference to the potential withholding of \$40.00 from the tenant's security deposit, there is no language in the condition inspection report whereby the tenant appears to have actually agreed to the retention of that amount.

Last, the landlord seeks an additional \$100.00 for the cost of the application filing fee.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Loss of Rent

The tenancy was a fixed-term tenancy. Unless a landlord and tenant mutually agree to end a fixed-term tenancy before its end date, a tenant cannot unilaterally end such a tenancy early (see section 45(2) of the Act).

In this dispute, the tenant provided notice on October 6, 2021 that they were terminating the tenancy effective October 16, 2021. The tenant thus breached the Act.

Further, based on the testimony of the landlord's representative, the landlord took immediate and comprehensive steps in finding a new tenant. They eventually secured a new tenant, who took up occupancy on December 1, 2021. In other words, it is my finding that the landlord suffered a monetary loss and that they did what was reasonable in mitigating that loss.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has proven their claim on a balance of probabilities that they are entitled to compensation in the amount of \$1,415.00.

Claim for Cleaning Cost

The tenant did not dispute this claim and as such the landlord is awarded \$30.00.

Claim for NSF Fee

While the tenant disputed this aspect of the landlord's claim, the landlord was able to produce what appears to be an accurate ledger of the tenant's account. And the ledger reflects the fact that there was a \$25.00 NSF fee attached to the tenant's account.

On a balance of probabilities, I find that the landlord has proven the tenant's incurring of a \$25.00 NSF. While I acknowledge that the tenant was "pretty sure" they paid this amount, the landlord's documentary evidence proves that it was not. The landlord is entitled to compensation in this amount.

Claim for Application Filing Fee

The landlord was successful in this application and is thus awarded \$100.00 to cover the cost of the application filing fee, pursuant to section 72 of the Act.

Summary, Doubling of Security Deposit, and Monetary Order

In summary, the landlord is awarded \$1,570.00.

However, I must at this point turn my attention to the operation of section 38(1) of the Act, which states that

Except as provided in subsection (3) or (4) (a), 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, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the landlord received the tenant's forwarding address in writing when that address was recorded on the outgoing condition inspection report on October 26, 2021. The landlord did not make an application for dispute resolution until November 18, 2021, which is a full 23 days after the landlord received the forwarding address.

Section 38(6) of the Act states that

If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlord did not comply with subsection 38(1) of the Act the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit in the amount of \$1,365.00.

The landlord was awarded a total of \$1,570.00. However, due to the operation of subsection 38(6) of the Act an amount of \$1,365.00 must be deducted. Therefore, the balance remaining owed by the tenant to the landlord is \$205.00.

It does not make practical sense for me to order the landlord to return the security deposit and similarly issue a corresponding monetary order against the tenant to pay the \$205.00.

Thus, I authorize (pursuant to section 38(4)(b)) the landlord to retain \$205.00 of the security deposit and I order the return of the balance (\$477.50) of the security deposit along with interest (\$1.35) as per the *Residential Tenancy Regulation* for a total return of \$478.85. The landlord is ordered to return this amount to the tenant within 15 days of receiving this decision.

Conclusion

The application is hereby granted, subject to the orders as set out above.

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: February 22, 2023

Residential Tenancy Branch