



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      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 damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

### Preliminary Issue- Service

The landlord testified that he served tenant AS with his application for dispute resolution an evidence via e-mail on August 7, 2022. The landlord there testified that he served

tenant TE with his application for dispute resolution an evidence via e-mail on August 8, 2022.

The landlord testified that he had a written service agreement Located in the addendum of the tenancy agreement which permitted service via e-mail. the tendency agreement was entered into evidence and the addendum provides permission to serve the tenants via e-mail.

Tenant AS testified that he received the landlord's application for dispute resolution and evidence on August 7, 2022 via email. Based on the testimony of both parties I find that both tenants were served with the landlord's application for dispute resolution and evidence via e-mail in accordance with sections 88 and 89 of the Act. I find that tenant AS was served on August 7 2022 and Tenant TE was deemed served on August 11, 2022, three days after it was emailed, in accordance with section 90 of the Act.

Tenant A.S. testified that he did not serve the landlord with his evidence because he was advised that he did not need to because it would amount to serving evidence of evidence.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that the respondent's evidence must be received by the applicant 7 clear days before the hearing. I find that the tenant failed to serve the landlord in accordance with rule 3.15 of the rules and so the tenant's evidence is excluded from consideration.

Any evidence the tenant intended on relying on in this hearing was required to be served on the landlord.

#### Preliminary Issue- Amendment

A portion of the address of the subject rental property was accidentally repeated in the application for dispute resolution. In the hearing both parties confirmed the correct address of the subject rental property. Pursuant to section 64 of the Act, I amend the application for dispute resolution to delete the repeated portion of the address of the subject rental property.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38; and
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72.

### Evidence and Analysis

While I have turned my mind to the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on June 1, 2022 and ended on July 11, 2022,
- monthly rent in the amount of \$1,350.00 was payable on the first day of each month, and
- a security deposit of \$675.00 was paid by the tenants to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that he served the landlord with his forwarding address via registered mail on August 6, 2022 and that it was returned to sender because it was unclaimed. The landlord testified that he never received a registered mail pick up slip and did not receive the tenant's forwarding address. The landlord testified that they communicated by email and email service was permitted and questioned why the tenant didn't email him his forwarding address.

I find that the tenant has not proved, on a balance of probabilities, that the landlord was served with his forwarding address as no proof of service documents for same were accepted for consideration in this application for dispute resolution and the landlord testified that he did not receive the tenant's forwarding address. As such, I find that in

accordance with section 38 of the *Act*, the landlord is not yet required to have returned the security deposit to the tenants.

Both parties agree that they completed a move in condition inspection and report at the start of the tenancy. The move in condition inspection report was entered into evidence.

Both parties agree that at the end of the tenancy they met to complete a move out condition inspection but that no move out condition inspection report was completed. The landlord testified that he did not fill out the move out condition inspection report because the unit was in good shape.

Tenant AS testified that the landlord requested him to waive his rights to the return of the security deposit and that he declined. This was not disputed by the landlord.

I find while the landlord did not complete the move out condition inspection report in accordance with section 35 and his right to retain the security deposit for damage to the subject rental property was extinguished pursuant to section 36 of the *Act*, this extinguishment only applies to the landlord's right to retain the deposit **for damage**. In this case the landlord's claim was not for damage to the rental unit but for other losses including loss of rental income. Therefore, the extinguishment provisions do not apply, and the tenants are not entitled to double their deposit.

Both parties agree that the tenant emailed the landlord a notice to end tenancy on June 29, 2022 effective at the end of July 2022. The landlord testified that he received the above email on July 1, 2022 and immediately started advertising the subject rental property for rent. The landlord entered into evidence a text message from the landlord to tenant AS dated July 1 at 7:11 p.m. which states:

Hi [AS]

Can I show place tomorrow afternoon between 12 to 4pm?

Based on the landlord's testimony and the July 1, 2022 text message entered into evidence, I find that the landlord received the tenants' notice to end tenancy on July 1, 2022.

The landlord testified that he is seeking \$2,100.00 in liquidated damages pursuant to section 16 of the tenancy agreement addendum which states:

16. LIQUIDATED DAMAGES FOR EARLY TERMINATION:

If the Tenant(s) decides to move out any month before Oct 2022 without giving at least 60 days notice or if the Tenant(s) is in breach of the Residential Tenancy Act or a material term of this agreement which results in Early Termination, then the Tenant must pay the sum of **Twenty One Hundred Dollars (\$2,100.00)** to the Landlord as liquidated damages and not as a penalty.

The Liquidated Damages is an pre-estimate of the Landlord's minimum administrative costs as agreed by the Tenant for the following: Touch up/ Partial Paint/ Appliances Cleaning/ Window Cleaning/ Bathroom and other floors Cleaning and Sanitising (\$1000), staging and removal of staging for listing photos (\$400), advertising, showings and Tenant Placement Fees (\$600), screening of applications, reference check per application, credit report check for short listed potential applicant (\$100). Payment of Liquidated Damages does not preclude the Landlord from exercising any further right to recover other damages from the Tenant.

Section 2 of the tenancy agreement states that this tenancy created by this agreement starts on June 1, 2022 and continues on a month-to-month basis until ended in accordance with the *Act*.

The tenant testified that this was a month-to-month tenancy that could not extend past October 31, 2022. The landlord testified that this was fixed term tenancy ending on October 31, 2022.

Based on section 2 of the tenancy agreement, I find that this tenancy is very clearly a month-to-month tenancy. I find the tenant's interpretation of the contract to be in line with the plain reading of the contract and the landlord's interpretation is not.

Section 45(1) of the *Act* states:

**45** (1)A tenant may end a periodic 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, and

(b)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 5 of the *Act* states:

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that section 16 of the tenancy agreement addendum seeks to contract out of section 45(1) of the *Act* by requiring the tenant to provide 60 days notice to end the tenancy rather than the one month provided for in section 45(1) of the *Act*. I find that section 16 of the tenancy agreement addendum is void and of no force or effect because it seeks to contract out of the *Act*. The landlord's application for liquidated damages is therefore dismissed without leave to reapply.

The landlord testified that the tenant owes \$150.00 in unpaid utilities. Both parties agree that the tenant was required to pay 1/3 of the utility bills.

The tenant testified that he may owe some utilities, but the landlord has not provided him with the original bill from which to calculate his portion. The landlord did not enter into evidence any utility bills or provide calculations for the tenant's portion of the alleged bill.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the landlord has not proved the value of the loss suffered, that being the cost of the utilities as no receipts, bills or invoices were entered into evidence. Pursuant to Policy Guideline 16, I find that the landlord has not met the above test and his application to recover \$150.00 for utilities is dismissed without leave to reapply.

The landlord testified that after the tenant moved out he swapped the lock at the subject rental property with another lock he had. The landlord testified that he usually does this at the end of a tenancy because he does not know if the tenants made any additional keys. The landlord testified that he is seeking \$70.00 for his labour in changing the lock. The landlord testified that it took him 30 minutes or maybe up to an hour to change the lock.

Tenant AS testified that he gave the landlord all of his keys at the end of this tenancy on July 11, 2022 and the landlord locked the door when they left after walking through the unit. This was not disputed by the landlord.

As stated above, the landlord may seek compensation if they can prove that a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement. I find that the tenant returned the keys to the landlord at the end of this tenancy. I find that the landlord has not proved that the tenant breached the Act, regulation or tenancy agreement. The landlord is not entitled to compensation for his practice of changing the locks at the end of a tenancy. That is a cost associated with being a landlord and is not to be passed on to the tenant. The landlord's application to recover labour costs is dismissed without leave to reapply.

The landlord testified that he is seeking to recover August 2022's rent in the amount of \$1,350.00 from the tenants because the tenants did not provide proper notice. The landlord testified that was not able to rent the subject rental property until August 15, 2022. The landlord testified that he rented the subject rental property at the same rental rate of \$1,350.00.

The tenant testified that he gave the landlord one month's notice and so should not have to pay for August 2022's rent.

Section 45(1) of the Act states that the tenant must give the landlord one clear month's notice to end tenancy after the date the landlord receives the Notice.

Since the landlord received the Notice on July 1, 2022, one month's clear notice would end the tenancy on August 31, 2022. Had the landlord receive the notice to end tenancy one day earlier, on June 30, 2022, then the tenant could legitimately have ended the tenancy on July 31, 2022.

I find that the tenants did not end the tenancy in accordance with section 45(1) of the Act and are liable to pay the landlord the loss of income associated with that breach of the Act, pursuant to section 67 of the Act and Policy Guideline 16.

I accept the landlord's testimony that he immediately started advertising the subject

rental property for rent, this testimony is supported by the July 1, 2022 text message entered into evidence. I accept the landlord's testimony that he was able to re-rent the subject rental property for August 15, 2022 at a rental rate of \$1,350.00. I find that since the landlord was able to rent out the subject rental property for August 15, 2022 and received rental income from that agreement, the loss suffered by the landlord amounted to ½ the rent for August 2022 in the amount of \$675.00. I find that in immediately advertising the subject rental property for rent the landlord mitigated his damages. I award the landlord \$675.00.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$675.00.

As the landlord was successful in the above application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72.

### Conclusion

The landlord is entitled to retain the tenants' security deposit in the amount of \$675.00.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: April 19, 2023

---

Residential Tenancy Branch