



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This hearing convened as a result of the landlords' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order for unpaid rent, compensation for alleged damage to the rental unit by the tenant, compensation for a monetary loss or other money owed, and recovery of the cost of the filing fee.

The landlords and tenant attended the teleconference hearing. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed. The tenant confirmed receipt of the landlord's application and the parties confirmed receipt of the other's evidence.

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.

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

Are the landlords entitled to compensation from the tenant and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on January 15, 2016. In their application, the landlords submitted that the tenancy ended on August 31, 2021, but at the hearing, testimony early in the hearing was that the tenancy ended on September 30, 2021. Monthly rent at the end of the tenancy was \$2,325.

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	CLAIMED
1. Security deposit paid to tenant	\$1150
2. Rent tenant said they were entitled	\$1800
3. Rent loss for September 2021	\$2325
4. Filing fee	\$100
TOTAL	\$5375

As to the security deposit claim, the landlords submitted the tenant requested their security deposit and it was wrongfully paid back, as the tenant was aware there were damages to the rental unit and the rental unit was not left clean.

As to the claim for rent paid to the tenant, the landlord said the tenant has asked for money throughout the tenancy, and that the tenant demanded that he was owed rent in return for his agreement to leave. The parties negotiated a pro-rated rent for August of \$1,800. The landlord said they found out the tenant was leaving when they were asked for a reference letter and never received a written notice from the tenant that they were vacating. The tenant demanded money to leave, so they paid them, according to the landlord. Later they discovered the tenant was not entitled to a free month's rent as they did not vacate "until days is September".

As to the claim for rent loss for September 2021, the rent loss was due to the tenant's "logistics", meaning the tenant chose when they vacated. The tenant stayed a few extra days into September and as a result, they are entitled to the loss of rent for September

2021. The landlord submitted that they spent time cleaning after the tenant vacated as the tenant failed to properly clean the rental unit.

Filed in evidence were copies of photographs, text messages between the parties, and receipts.

The landlord confirmed there was no move-in or move-out condition inspection report (Report).

Tenant's response –

The tenant submitted they requested their security deposit because the parties did not complete a Report.

As to the other requests, the tenant submitted that they received a text message from the landlord in late July 2021 informing them their daughter wanted to move into the home. The tenant then messaged the landlord and asked if that was their two month notice to end the tenancy at the end of September 2021. In response, the landlord messaged the following, "Yes, legally notice would be July 31-sept 30". The tenant submitted that they believed this was the landlord's legal two month notice under the terms of section 49 of the Act.

The tenant submitted that they found a place right away and at no time did the landlord's ask for a written notice.

The tenant said that the \$1,800 was a negotiated, pro-rated rent for September as they were a few days late leaving in September 2021.

The tenant said they thought they paid the rent for August 2021, but were not sure.

As to the claim for \$2,325, the tenant submitted that the landlord failed to provide proof that they advertised the rental unit and at no time did they try to arrange a viewing of the unit. The tenant submitted that the landlords provided insufficient evidence that they lost revenue for September 2021.

The landlord said they could not legally rent the rental unit without notice and their daughter moved into the lower unit, not the tenant's upper rental unit. The landlord said the tenant did not pay rent for August or September 2021.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

While I have reviewed the oral and documentary evidence, I refer to only the relevant evidence regarding the facts and issues in determining this Decision. The burden of proof is on the party making the claim.

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.

Security deposit –

While the landlord said the tenant should return the security deposit as the rental unit was not cleaned, I find the landlords claim was not for cleaning or damage to the rental unit. A security deposit is held in trust for the tenant during the tenancy, and at the end of the tenancy once the landlord receives the tenant's written forwarding address, the landlord must make an application claiming against the security deposit or return the security deposit, within 15 days.

In this case, the landlords elected to return the security deposit at the tenant's request. For this reason, I find the landlords submitted insufficient evidence to show the tenant breached the Act as it was the landlords' choice to return the tenant's security deposit without making a claim.

I therefore **dismiss** the landlords' claim for \$1,150, without leave to reapply.

Rent tenant claimed as an entitlement –

The landlord said that \$1,800 was paid to the tenant because that was the amount requested by the tenant and they paid just so the tenant would leave. I find this is also

a choice made the landlords and not a direct breach of the Act by the tenant. I find the landlords failed to provide sufficient evidence to hold the tenant responsible for choices made by the landlords.

I therefore **dismiss** the landlords' claim for \$1,800, without leave to reapply.

Rent loss for September 2021 –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find the evidence of both parties showed the tenant failed to vacate the rental unit by August 31, 2021, and that the tenant remained until at least September 2, 2021. Additionally, the landlord's text messages to the tenant requesting the tenant to vacate the rental unit was not a valid or enforceable notice to end a tenancy. The tenant was not required to vacate by operation of the Act. It is the tenant's responsibility to know their rights regarding a proper, legally enforceable notice to end a tenancy.

For these reasons, I find the tenant was obligated to pay the monthly rent for September 2021 under the tenancy agreement, as they were still in the rental unit until at least September 2, 2021, without having given the landlords a proper written notice. I also find the tenant submitted insufficient evidence that they paid rent for September.

I therefore **grant** the landlords a monetary award of **\$2,325**.

As the landlords were partially successful with their application, I grant the landlords recovery of the filing fee of **\$100**.

For the above reasons, the landlords are provided with a Monetary Order in the above terms, **\$2,425** and the tenant must be served with this Order as soon as possible to be enforceable. Should the tenant 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.

The tenant is cautioned that enforcement costs are subject to recovery from the tenant.

Conclusion

The landlords' application was partially successful, and they have been issued a monetary order in the amount of \$2,425.

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: April 11, 2023

Residential Tenancy Branch