



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Royal LePage W
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On July 15, 2022 the landlord applied for:

- compensation for monetary loss or other money owed, requesting to retain the security and/or pet damage deposit; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the landlord entitled to compensation in the amount of \$4,575.00 for breach of a fixed term tenancy and retention of the security and pet damage deposits?
- 2) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed tenancy began on December 1, 2021; rent is \$2,970.00, due on the first of the month; and the tenants paid a security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00, which the landlord still holds.

A copy of the tenancy agreement is submitted as evidence. It names tenants JB and AD and states that the tenancy was for a fixed term to November 30, 2022.

The parties agree that tenant JB still resides in the rental unit and that tenant AD has moved out.

The landlord testified they seek \$4,575.00 because tenant AD did not participate in a move-out condition inspection, gave insufficient notice, and breached the fixed term tenancy agreement. The landlord submitted a Monetary Order Worksheet as evidence, which states the landlord seeks \$1,575.00 for breach of the tenancy agreement, and to retain the security and pet damage deposits as the tenant did not participate in a move-out condition inspection.

The landlord testified that tenant AD vacated the unit without telling her roommate, co-tenant JB, and left her portion of the house "in bad shape." The landlord testified they think tenant AD moved out July 1, 2022.

The landlord is of the position that tenant AD contravened section 4 of the tenancy agreement addendum, which states that if the tenant ends the fixed term tenancy agreement before the end of the agreed term, the tenant must pay the landlord \$1,500.00 plus GST.

The landlord confirmed that tenant JB has continued to reside in the rental unit and pay the rent.

Tenant JB testified that he agreed with the landlord's testimony.

Tenant AD testified that she vacated the rental unit on July 1, 2022 and that she seeks to recover her half of the deposits, as she and JB each paid \$1,500.00. AD testified she has not made an application to the Residential Tenancy Branch to recover any part of the deposits.

Analysis

Pursuant to section 45 of the Act, a tenant cannot end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy.

As the landlord and tenant JB agree that JB has continued to reside in the rental unit and has continued to pay rent, I find the original tenancy agreement has not ended, and that therefore the fixed term tenancy was not ended early.

Section 35 of the Act states that the landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

Section 38 of the Act states that:

38 (1) 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.

Considering sections 35 and 38, as this tenancy has not ended, it would be premature to conduct a move-out condition inspection, or consider the security or pet damage deposits.

I find the landlord is not entitled to compensation.

As the landlord is unsuccessful in their application, I decline to award the filing fee.

Conclusion

The landlord's application is dismissed.

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: May 08, 2023

Residential Tenancy Branch