



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

A.M. appeared as the Landlord’s agent. The Landlords P.M. and K.M. appeared briefly though disconnected leaving conduct of their application to their agent. S.M. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

The Landlord’s agent made mention that he received a USB key from the Tenant but did not open it due to concerns over potential viruses. I find that this is not a valid reason to not open and review the Tenant’s evidence, such that I accept it was served.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Is the Landlord entitled to claim against the security deposit?
- 3) Is the Landlord entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on January 15, 2022.
- The Tenant moved out of the rental unit on August 31, 2022.
- Monthly rent of \$3,600.00 was due each month.
- A security deposit of \$1,800.00 and a pet damage deposit of \$900.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement. The tenancy agreement lists that rent is due on the 15th of each month. The parties advise that rent was paid on the first, with the Landlord's agent saying this was done at the Tenant's request.

1) *Is the Landlord entitled to a monetary order for unpaid rent?*

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.

4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlord's agent advises that the Tenant failed to give proper notice to the Landlord that he was vacating. The Landlord's agent says that the Landlord was notified by a neighbour on August 31, 2022 that the Tenant was moving out. The Landlord's agent says the Landlord took back possession of the rental unit on September 2, 2022 and re-rented the unit to another tenant on October 1, 2022. The Landlord seeks lost rental income for the month of September 2022.

The Tenant does not deny moving out without providing notice. The Tenant's evidence includes a text message dated August 31, 2022 in which he tells the Landlord's agent that the keys were left inside the rental unit.

The Tenant argues, however, that the tenancy was frustrated by the Landlord, citing issues with garbage in the yard, an illegal suite, unclean carpets on move-in, maintenance issues with a fence and the yard, and a leak in the tub which he says the Landlord blamed on him and sought \$10,000.00 in compensation.

Policy Guideline #34 provides guidance on the application of the doctrine of frustration to tenancy agreements, stating the following:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

There is no allegation by the Tenant that the rental unit was not otherwise habitable and fit for use as living accommodation, which is ultimately the purpose of the tenancy

agreement. Even if I were to accept the Tenant's allegations, none of the issues mentioned are of the nature that the tenancy agreement was frustrated.

At one point, the Tenant mentions that he was frustrated with the issues during the tenancy. I accept that that is probably true. However, a tenant's personal frustration with a landlord is insufficient basis for arguing that the tenant is discharged of all obligations under the tenancy agreement.

I note that this was a monthly periodic tenancy, such that the Tenant was obliged to give at least one month's notice to the Landlord as per s. 45 of the *Act*. There is no dispute here that the Landlord received no notice whatsoever. The Tenant notified the Landlord on August 31, 2022 that the keys were in the rental unit, which is in breach of his obligation to provide notice under s. 45 of the *Act*.

I find that the Tenant breached s. 45 of the *Act* and that the Landlord lost rental income for one month. The Landlord could not have mitigated their damages as they was provided no notice. I find that the Landlord has demonstrated a claim to lost rental income of \$3,600.00.

2) *Is the Landlord entitled to claim against the deposits?*

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

The Landlord's agent advises that the Tenant did not provide a forwarding address at the end of the tenancy. The Tenant confirms he did not provide a written forwarding address at the end of the tenancy but argued that he provided an address at the beginning of the tenancy on his application form.

Section 38(1) is clear that the 15-day deadline is triggered on the later of either the tenancy ending or the Tenant providing a forwarding address, in writing, to the Landlord. In this instance, I find that providing an address on the application form is insufficient to fulfill the Tenant's obligation to provide a forwarding address at the end of the tenancy. As such, I find that the 15-day deadline of s. 38(1) of the *Act* has not been triggered.

I have also turned my mind to the question of extinguishment under ss. 24 and 36 of the *Act*. However, this issue is only relevant should the Landlord have claimed against the deposits for damage to the rental unit. It does not limit the ability of the Landlord to claim against the security deposit for other compensation.

Pursuant to s. 72(2) of the *Act*, I order that the Landlord retain the security deposit of \$1,800.00 and the pet damage deposit of \$900.00 in partial satisfaction of their compensation claim.

3) *Is the Landlord entitled to their filing fee?*

I find that the Landlord is entitled to their filing fee as they were successful on their application. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Summary

In summary, I grant the Landlord compensation taking the following into account:

Item	Amount
Compensation for unpaid rent	\$3,600.00
Less security deposit to be retained by the Landlord	(\$1,800.00)
Less pet damage deposit to be retained by the Landlord	(\$900.00)
Landlord's filing fee	\$100.00
TOTAL	\$1,000.00

Conclusion

Pursuant to ss. 38, 67, and 72 of the *Act*, I order that the Tenant pay **\$1,000.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, the Landlord may enforce it by filing it with the Provincial 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: June 07, 2023

Residential Tenancy Branch