



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed on October 26, 2022, is seeking orders as follows:

1. For a monetary order for loss of rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application filed on November 22, 2022, is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy on October 5, 2002, which began on October 31, 2022 and was to expire on May 31, 2023. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenant paid a security deposit of \$700.00. The tenant did not move into the rental unit.

The landlord claims as follows:

a.	Loss of rent for October 2022	\$ 1,050.00
b.	Loss of rent of November 2022	\$ 700.00
c.	Filing fee	\$ 100.00
	Total claimed	\$ 1,850.00

The landlord testified that they entered into a tenancy agreement. The landlord stated that the tenant did not move into the rental unit. The landlord stated that they lost rent for October and November 2022. The landlord stated they were able to find a new tenant in November 2022 and their tenancy was to start December 1, 2022.

The tenant testified that they did sign the tenancy agreement and did not move into the rental unit; however, they had to confirm with their employer as to how long they would be working in this location as they moved to different locations, and sometime would only be there for a brief period. The tenant stated that they informed the landlord at the time. The tenant stated that they wanted a month to month tenancy.

The tenant testified that they gave the landlord their forwarding address on October 15, 2022 and the landlord did not return their security deposit within 15 days.

The landlord responded they never agreed or had any conversation with the tenant about their employment length. The landlord stated the tenant agreed to rent the rental unit and did not move in because they found cheaper rent elsewhere.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that resulted from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 16 of the Act states, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the parties entered into a tenancy agreement, which was to commence on October 31, 2022. I find the landlord is not entitled to rent for October 2022 as that is before the tenant's obligation were to start.

However, the tenant's obligation commenced when they entered into the tenancy agreement on October 5, 2022 and agreed to move into the premises on October 31, 2022 for a fixed term expiring on May 31, 2023. The tenant should not have entered into the tenancy agreement if their employment contract was still undetermined. That is between the tenant and their employer, not the landlord.

Even if I accept the tenant wanted to be on a month-to-month tenancy, which it was not, the earliest date the tenant could have legally ended the tenancy would have been November 30, 2022, if the tenant gave notice to end the tenancy in October 2022. I find the tenant breached the Act when they ended the tenancy earlier than the Act allowed. The tenant is responsible to compensate the landlord for any loss of rent up to the date they were legally entitled to end the tenancy. In other words, the tenant would still be responsible for November 2022, rent, if this was a month-to-month tenancy.

The landlord is claiming for half the rent for November 2022, which I find is reasonable, not for the balance of the fixed term agreement as they were able to find a new tenant in November 2022 for December 1, 2022. I find the landlord did mitigate the loss. I find the tenant owes the landlord **\$700.00** for the loss of rent for November 2022 as claimed in their application.

I find that the landlord has established a total monetary claim of **\$800.00** comprised of the above described amount and the **\$100.00** fee paid for this application.

The landlord received the tenant's forwarding address on October 15, 2022. The landlord applied to retain the tenant's security deposit on October 26, 2022. I find the landlord did file their application claiming against the security deposit, in accordance with section 38 of the Act. I find the tenant is not entitled to double the amount of the security deposit. Therefore, I dismiss the tenant's application without leave to reapply.

I order that the landlord retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord is granted a monetary order for loss of rent and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: August 01, 2023

Residential Tenancy Branch