



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL
 MNSD, MNEVC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the landlord (the landlord's Application) on December 1, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Retention of the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with an Application that was filed by the Tenant (Tenant's Application) on March 7, 2023, seeking:

- Compensation for monetary loss or other money owed;
- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on August 29, 2023, and was attended by the former tenant and occupants of the rental unit, and the landlord. All testimony provided was affirmed. As the parties acknowledged service of each other's Notices of Dispute Resolution Proceeding (NODRP's), and raised no concerns regarding service, I found the parties sufficiently served for the purpose of the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). The hearing of both Applications therefore proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over

me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

Preliminary Matter #1

The parties agreed that only M.K.H. was named as a tenant in the tenancy agreement. I therefore find that J.H. and G.K. were occupants of the rental unit, and not tenants under the tenancy agreement. As a result, the Application(s) were amended to remove them as named applicants and respondents.

Preliminary Matter #2

Although the landlord submitted a monetary order worksheet showing costs for the replacement of a security camera, these costs were not set out in the landlord's application. As a result, and as no amendment to the application for dispute resolution was filed by the landlord, I restricted the matters claimed by the landlord in the hearing to those set out in the application.

Preliminary Matter #3

The tenant and occupants initially denied receipt of the documentary evidence before me from the landlord. However, when I asked the tenant and occupants to describe the documents received, I was satisfied that the tenant had received most of the documentary evidence before me from the landlord. As a result, I accepted the evidence received by the tenant as served. Evidence not acknowledged as received by the tenant was excluded.

The landlord stated that no documentary evidence was served on them by the tenant or occupants. Although the tenant and occupants provided excuses for the lack of service, none of which satisfied me that the evidence could not have been served as required, they acknowledged that none of the documentary evidence before me from them was served. As a result, I have excluded it from consideration as the landlord was not

provided with an opportunity to review and consider it and I am satisfied that the tenant had ample opportunity to serve it on the landlord as required.

Issue(s) to be Decided

Is the landlord entitled to compensation for monetary loss or other money owed, specifically \$1,850.00 in lost rent for December 2022?

Is the landlord entitled to recovery of the filing fee?

Is the landlord entitled to retain the tenant's security deposit towards the amounts sought?

Is the tenant entitled to compensation for monetary loss or other money owed, specifically \$1,800.00 for loss of quiet enjoyment?

Is the tenant entitled to the recovery of the filing fee?

Is the tenant entitled to the return of all or a portion of their security deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on September 1, 2022, and was set to end on March 31, 2023, at which time the tenancy would become month-to-month. The tenancy agreement states that rent in the amount of \$1,850.00 is due on the first day of each month, and that a security deposit in the amount of \$925.00 is required. Neither party disputed the accuracy of the above terms. They agreed that the \$925.00 security deposit was paid, which the landlord stated is still held in trust.

The parties agreed that the tenant gave notice to end their tenancy effective November 30, 2022, but disagreed about the date the notice was provided and whether the tenant was entitled to end the tenancy at that time and in that manner. The tenant and occupants stated that the one month notice to end tenancy was dated October 31, 2022, and the landlord stated that it was dated November 1, 2022. In any event, they agreed that the tenants vacated on November 30, 2022.

Everyone agreed that a move-in condition inspection and report were not completed. They also agreed that a move-out condition inspection and report were not completed,

but disagreed about why. The tenants stated that they provided the landlord with their forwarding address in writing on November 30, 2022, via WhatsApp but the landlord denied receipt. The tenant and occupants stated that they subsequently put a paper copy of their forwarding address in the landlord's mailbox on December 2, 2022, and the landlord acknowledged receipt on December 4, 2022.

The landlord stated that as the tenants did not give proper notice to end their tenancy, they owed \$1,850.00 in rent for December of 2022. The landlord stated that they posted the rental unit for re-rental as soon as possible, and advertised it for occupancy starting December 1, 2022. Copies of advertisements were submitted for my consideration. The landlord stated that as the rental unit did not rent in December of 2022, the tenant owes them that lost rent.

The tenants stated that they gave proper notice. They also stated that they were being harassed because the landlord installed a security camera that faced inside their rental unit. The tenant and occupants stated that the police advised them that they could end their tenancy, so they did. As a result, they denied owing any rent for December of 2022.

Although the landlord acknowledged putting up a security camera, they denied facing it towards the tenant's rental unit. The landlord stated that the tenant or occupants turned the security camera to face their own window, and pointed to security camera footage they state shows this.

The tenant sought \$1,800.00 in compensation for loss of quiet enjoyment due to the camera and due to the landlord preventing them from celebrating Diwali. The landlord again denied facing the security camera to capture any part of the rental unit. They also denied that they prevented the tenant and occupants from celebrating Diwali, a holiday they celebrate as well.

Analysis

The tenancy agreement between the parties had a fixed term between September 1, 2022 – March 31, 2023. As a result, I find that section 45(2) of the Act applies with regards to the tenant unilaterally ending the tenancy. Section 45(2) of the Act states that a tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

In accordance with section 45(2) of the Act, I therefore find that the earliest the tenant could have unilaterally ended their tenancy by giving a one-month notice was March 31, 2023. Although section 45(3) of the Act states that a tenant under a fixed-term tenancy agreement may end the tenancy earlier than the end date for the fixed term if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, no evidence was presented by either party that section 45(3) of the Act applies. Further to this, no evidence was presented that the requirements set out under Residential Tenancy Policy Guideline (Policy Guideline) #8 for ending a tenancy due to a breach of a material term were followed by the tenants. As a result, I find that section 45(3) of the Act does not apply here.

Based on the above, I find that the tenant was therefore not entitled to end their tenancy on November 30, 2022, regardless of whether they gave notice to do so on October 31, 2022, or November 1, 2022. I also find that in doing so, they breached both their fixed-term tenancy agreement and section 45(2) of the Act. Policy Guideline #3 states that where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement, pursuant to section 7(1) of the Act. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

In this case, the landlord states that they lost one month's rent because the tenant broke the fixed-term agreement. I am satisfied based on the advertisements provided by the landlord that they posted the rental unit for re-rental quickly, on more than one site, and at the same rental rate. As a result, I am satisfied that they acted reasonably to mitigate the loss caused by the tenant's breach of their tenancy agreement and section 45(2) of the Act. I therefore grant the landlord recovery of the \$1,850.00 in lost rent sought under section 7 of the Act. As the landlord was successful in their claim, I also grant them recovery of the \$100.00 filing fee.

Although the tenant and occupants argued that the landlord breached section 28 of the Act by failing to protect their right to quiet enjoyment, no documentary or other corroboratory evidence was submitted to substantiate this. The landlord also denied that this occurred. As a result, I find that the tenant has failed to discharge their burden of

proof and satisfy me on a balance of probabilities that the landlord not only breached section 28 of the Act, but that a loss of \$1,800.00 occurred as a result. I therefore dismiss this claim without leave to reapply.

Although the tenant sought the return of their deposit, I find that it was properly withheld by the landlord pending the outcome of their application. Although I find that the landlord extinguished their right to claim against the security deposit for damage under section 24(2) of the Act by failing to complete a move-in condition inspection and report, they were still entitled to make other claims against the security deposit, provided they complied with section 38(1) of the Act. Although the tenant stated that they provided their forwarding address to the landlord via WhatsApp on November 30, 2022, no proof of this was submitted and the landlord denied that this occurred. As a result, I find that the landlord did not receive the tenant's forwarding address until December 4, 2022, two days after it was placed in their mailbox. As the landlord filed their application claiming against the deposit for lost rent on December 1, 2022, I therefore find that they complied with section 38(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I therefore grant the landlord authorization to withhold the tenant's \$925.00 security deposit, plus \$13.41 in interest owed, towards the \$1,950.00 owed to them by the tenant as set out above. I therefore dismiss the tenant's application for its return without leave to reapply.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of \$1,011.59 and I order the tenant to pay this amount to the landlord.

Conclusion

The tenant's application is dismissed, in its entirety, without leave to reapply.

The landlord's application is granted. Pursuant to section 72(2)(b) of the Act, the landlord is permitted to withhold the \$938.41 security deposit and interest.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$1,011.59** for the balance owed. The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 Branch under Section 9.1(1) of the Act.

Dated: September 28, 2023

Residential Tenancy Branch