



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 landlords and the tenant.

The landlords' application 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 pet damage deposit (Deposits);
and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return of double the Deposits; and
2. To recover the cost of filing the application.

Both parties appeared.

At the outset of the hearing the tenant testified that they did not receive the landlord's application. The landlord stated the tenant was served with their application and evidence by registered mail sent April 27, 2023. The landlord provided the tracking number at the hearing and the Canada Post history shows the tenant was left two notification cards to pickup the package. The tenant did not pickup the packages and the package was returned unclaimed to the landlord.

The landlord stated they also provided the tenant with the Canada Post tracking number and sent the hearing package to the tenant by email, which the tenant confirmed they received.

Based on the above, I find the tenant was duly served in accordance with the Act, refusal or neglect to pickup the package does not override the deemed services provision. Further, clearly the tenant received a subsequent copy of the landlord's application by email.

The landlord confirmed they received the tenant's evidence.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

At the outset of the hearing the tenant was informed that they are not entitled to double the Deposits. The landlords' application was filed within 15 days of the tenancy ending and is claiming for loss of rent, not damages. Therefore, I do not need to consider extinguishment as the landlord is entitled to claim against the Deposits for loss of rent and extinguishment is not considered. I will, therefore, only considered whether the tenant is entitled to the return of singular their Deposits.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for loss of rent?
Is either of the parties entitled the Deposits?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on December 1, 2022 and was to expire on November 30, 2023. Rent in the amount of \$1,750.00 was payable on the first of each month. The tenant paid a security deposit of \$875.00 and a pet damage deposit of \$300.00. The tenancy ended on April 1, 2023.

The landlords claim as follows:

a.	Loss of rent for April 2023	\$1,750.00
b.	Filing fee	\$ 100.00
	Total claimed	\$1,850.00

The landlord testified that the tenant gave notice to end their tenancy on March 13, 2023, by email effective April 1, 2023. The landlord stated that they responded to the tenant that they are breaching the fixed term agreement and would be liable for loss of rent.

The landlord testified that on March 15, 2023, they advertised the rental and had viewing; however, due to the short notice given by the tenant they were unable to rent the rental unit for April 2023. The landlord stated that they found a new renter and they

took possession on May 1, 2023 releasing the tenant from any further liability. The landlord seeks to recover loss of rent for April 2023, in the amount of \$1,750.00.

The tenant testified that they gave the landlord notice to end the tenancy on March 13, 2023 because they believed their health and safety was an issue and of multiple breaches under the Act. The tenant stated that on February 13, 2023 mould was discovered in the shared laundry room. The tenant stated that the landlord did not give them the contractors information or moisture readings. The tenant stated that they overheard the landlord and the contractor's conversation that they could not find the source of the mould.

The tenant testified that the landlord had an open house to show the rental unit to prospective renter and there must have been 30 people attend. The tenant stated some of them had indicated they could move into immediately.

The landlord argued on February 13, 2023 they were notified of a mould issue in the shared laundry room and on February 15, 2023 they had a contractor attend. The landlord stated that the drywall was removed from the wall and there was no moisture found in the wall. The landlord stated that the mould was isolated to an area by the door, and they determined that it was from water that came through the door or through the threshold. The landlord stated that there was a large fire two months earlier on the block and maybe water egress from that. The landlord stated that the drywall was replaced, and threshold was sealed and there was no further issues.

The landlord argued that they had also sent pictures to the tenant at the time which showed that there was no moisture behind the wall when the drywall was removed. The landlord stated that they never heard anything from the tenant after February 15, 2023 until the tenant gave their notice on March 13, 2023 ending the tenancy. The landlord stated that it appears the tenant was ending the tenancy because the landlord did not give them 24 hours' notice to enter the shared laundry room to make the repair; however, this was not in the tenant's rental unit, it is the common laundry room, and they did not have to give the tenant notice.

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. In this case, landlord has the burden of proof to prove their claim.

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 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.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

45 (2) 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,*

...

The tenant is alleging a breach of a material term to end the tenancy. To end a tenancy agreement for breach of a material term the party alleging the breach must inform the other party in writing that there is a problem and that they believe the problem is a breach of a material term and the problem must be fixed by a deadline which must be reasonable and if the problem is not fixed by the deadline will end the tenancy.

I have read the tenant's notice to end tenancy. The primary reason the tenant was ending the tenancy was because the landlord did not give them 24 hours to enter the common shared laundry room. However, the landlord was not required to give the tenant any notice as the landlord was not entering the rental unit. I find there is no breach of the Act by the landlord.

The tenant then refers to request their Deposits expecting that their Deposits will be returned. I do not need to consider this in the notice to end tenancy.

The tenant then makes a comment about the landlord not hiring a profession to deal with the mould. However, the landlord immediately hired a contractor who attend the rental premises and the drywall was removed, no leak was behind the wall and the contractor then reinstalled new drywall and sealed the threshold as they believed that was the point of entry of the water. I find the landlord actions were appropriate and the repair made.

The tenant does not have the right to dictate whom the landlord hires to make repairs or make demands on the landlord. Clearly the problem was rectified on February 15, 2023, as there was no further communication on this issue for almost two months before the tenant gave notice to end the tenancy. I find the tenant has failed to prove they had the right to end the tenancy for a breach of a material term, and even if they did, which they did not, they did not comply with the requirements as indicated above.

In this case, the evidence of the parties that the tenant gave notice to end the tenancy on March 13, 2023 effective April 1, 2023. I find the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement, which was November 30, 2023 I find the tenant has breach section 45(2) of the Act.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

The landlord immediately advertised the rental unit and showings took place. The landlord did not find a suitable tenant for April 2023, due to short notice. The landlord found a new renter for May 2023, releasing the tenant from their obligation under the tenancy agreement and Act. I find the landlord took appropriate steps to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for April 2023, in the amount of **\$1,750.00**.

I find that the landlords have established a total monetary claim of **\$1,850.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the Deposit of **\$1,175.00** and interest of **\$19.27** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$655.73**.

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 landlords are granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

The tenant's application for double the Deposits 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: November 03, 2023

Residential Tenancy Branch