



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL / MNSD, FFT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). The landlord's application against tenant IN for:

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,017.55 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenants' application for:

- monetary order for \$3,077.92 representing two times the amount of the security deposit and pet damage deposit, less an amount already returned, pursuant to sections 38 and 62 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing. The tenants were assisted by an agent (CM).

The parties agreed the landlord had served the tenants with a copy of his notice of dispute resolution proceeding package and supporting documentary evidence.

The landlord testified that he did not receive the tenants' application materials. IN testified that she sent these materials to the landlord via ordinary mail on November 10, 2023. Section 89 of the Act does not permit a notice of dispute resolution proceeding to be served by ordinary mail. As such, I find that the tenants' application materials have not been served in accordance with the Act. I dismiss the tenants' application, with leave to reapply.

At the hearing, I advised the parties of this, and also advised them that, due to Residential Tenancy Branch (RTB) standard practice, I still have the authority to make an order that the landlord pay the tenants an amount equal to twice the security and pet damage deposits, as the landlord has made a claim to retain these deposits.

Additionally, based on the landlord's testimony, I declined to accept the tenants' documentary evidence. While section 90 of the Act allows documents to be deemed served five days after they are sent by ordinary mail, this is a rebuttable presumption. I find that the landlord's testimony that he did not receive the tenants' documents to be sufficient to rebut this presumption.

The tenants were permitted to rely on the written submissions of their agent (which are not evidence, and therefore were not required to be served) as well as refer to any of the landlord's documentary evidence.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,017.55;
- 2) recover the filing fee;
- 3) retain the security deposit and the pet damage deposit in satisfaction of the monetary orders made?

Evidence and Analysis

While I have considered the 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.

1. Tenancy Agreement

The parties entered into a written, fixed term tenancy agreement starting September 1, 2022 and ending August 31, 2023. The tenancy agreement indicated that at the end of the fixed term, the tenancy will end and the tenant must vacate the rental unit. It specified the reason for this a "landlord or family moves in".

The monthly rent was \$2,750 and was payable on the last day of each month. The tenants paid the landlord a security deposit of \$1,375 and a pet damage deposit of \$700 (collectively, the Deposits). On May 12, 2023, the landlord returned \$1,172.08 of the

Deposits (representing \$1,157.45 of the Deposits plus \$14.63 in accrued interest on full amount of Deposits to that date). He continues to hold the balance in trust for the tenants.

The tenancy agreement includes an addendum, written by the landlord, of additional terms, including the following:

17. TERMINATION OF TENANCY

If the Tenant wishes to terminate the tenancy, the Tenant provide written notice to the landlord that the Tenant wishes to vacate the Rental Premises, not less than 30 days in advance of the last day of the rental period (the last day of the month).

(the Termination Clause)

2. End of Tenancy

The parties agree on the basic facts of the case. The tenants posted a notice to end tenancy to the landlord's door on March 9, 2023 stating that they were ending the tenancy as of April 30. The parties conducted a move out condition inspection on April 30, and completed a move out report. The tenants' forwarding address was listed on this report. The landlord returned \$1,172.08 of the Deposits to the tenants via e-transfer on May 12.

The landlord argued that the tenants breached agreement by vacating prior to the end of the fixed term. He testified that between March 17 and May 4, 2023, he was in Europe on a pre-planned vacation. As such, he argued he was not able to market and re-rent the rental unit himself or conduct the move-out inspection. He had to hire a property management company to undertake this work, at a cost of \$798.

The property management company was able to secure a new tenant to move into the rental unit on May 1, 2023. The landlord did not lose any rental income from the rental unit as the result of the tenants' alleged breach of the tenancy agreement.

3. Parties' Positions

The landlord argued that the tenants breached the tenancy agreement by moving out prior to the end of the fixed term. As a result of this breach, the landlord argued he incurred expenses he would not otherwise have incurred (property management fees) and he is entitled to recover them. He seeks to recover the costs of re-renting the rental unit as well as the filing fee for this application and associated disbursements of \$19.55.

The tenants argue that they did not breach the tenancy agreement. They state that Termination Clause allowed them to end the tenancy by giving 30 days notice of their intention to do so. As they gave more than 30 days notice, they argue that there is no basis to find them in breach.

CM argued that as the landlord indicated that the tenancy would end at the end of the fixed term, for his or his family's use, the only circumstance that the Termination Clause could apply under the tenancy agreement was for ending the tenancy during the fixed term.

The landlord took the position that the Termination Clause did not supersede the fixed term of the tenancy, and that it should not be interpreted to allow the tenants to end the tenancy prior to the end of the fixed term. The implication of the tenants' interpretation the Termination Clause would be to deprive the tenancy agreement of any actual term and would instead cause the tenancy to effectively be a month-to-month tenancy.

Analysis

1. Did the tenants breach the Act by vacating prior to the end of the fixed term?

At its heart, this dispute involves the reconciliation on two apparently contradictory provisions: the requirement that the term of the tenancy agreement be one year, and the term allowing the tenants to end the tenancy agreement on 30 days written notice.

Sections 45(2) and (3) of the Act only permits a tenant to end a fixed term tenancy after the fixed term has expired or the landlord has breached a material term of the tenancy agreement. On the facts presented, neither of these preconditions has occurred. Section 45(1) of the Act allows a tenant to end a periodic tenancy (commonly referred to as a month to month tenancy) by giving the landlord one month's written notice.

Despite this, it is not uncommon for a landlord to include a clause in a fixed term tenancy agreement requiring a tenant to give the landlord 30 days notice to end the tenancy. Such clauses are commonly reconciled with the requirements for ending a tenancy set out at section 45(2) and (3) by finding that they only apply to the tenancy once it converts from a fixed term to a periodic tenancy pursuant to section 44(3) of the Act.

However, section 44(3) of the Act causes a fixed term tenancy to convert to a periodic tenancy at the end of the fixed term, only if the agreement does not require the tenant to vacate the rental unit at the end of the fixed term. In the present case, the tenancy agreement explicitly states that the tenants must vacate the rental unit at the end of the fixed term to allow the landlord or his family to move into the rental unit.

As such, I cannot find that the Termination Clause is only to apply once the fixed term ends. Once the fixed term ends, the tenancy is over. The Termination Clause can therefore be reasonably interpreted to only apply during the fixed term. However, the fact that the tenancy itself is for a fixed term can cause someone to reasonably think that the tenancy agreement can only be terminated in accordance with sections 45(2) and (3).

These interpretations are mutually exclusive. The tenancy agreement itself is therefore ambiguous. A principal of contractual interpretation is that when an agreement is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording. This principle is known as *contra proferentem* or “interpretation against the draftsman”.

As the landlord authored the addendum, I find that he is responsible for the tenancy agreement’s ambiguity. As such, I find that it should be interpreted in a manner which favours the tenants.

I find that the tenants complied with the Termination Clause, and gave more than 30 days notice to end the tenancy. As such, I do not find that they breached the Act or the tenancy agreement. I dismiss the landlord’s application, in its entirety, without leave to reapply.

2. Are the tenants entitled to the return of the balance of the Deposits?

As stated above, even though this is the landlords’ application, as the landlord has applied to retain a portion of the Deposits, it is standard RTB policy to address whether the balance of the Deposits must be return and if the tenants are entitled to double the amount of the Deposits.

Section 38 of the Act requires a landlord to return the full amount of the Deposits or make an application claiming against them within 15 days of the later of either the tenancy ending or the tenants providing the landlord with their forwarding address. If the

landlord does not, the tenants may be required to an amount equal to double the Deposits, per section 38(6).

In this case, both of these occurred on April 30, 2023. As such, the landlord was required to return the Deposits or make this application no later than May 15, 2023. The landlord returned \$1,172.08 of the Deposits on May 12, 2023 and made this application claiming against the balance of the Deposits on May 14, 2023. Both of these dates are within the required time frame. As such, the tenants are not entitled to double the Deposits.

However, as I have dismissed the landlord's application, I must order the return of the balance of the Deposits, plus all accrued interest, as follows:

Description	Total
Balance of Deposits	\$917.55
Interest on Balance of Deposits (May 13/22 to January 3/24)	\$11.42
	\$928.97

Conclusion

The landlord's application is dismissed, without leave to reapply.

I order the landlord pay the tenants \$928.97, representing the return of the balance of the Deposits and all accrued interest.

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: January 3, 2024

Residential Tenancy Branch