



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (Landlord's Application) filed under the *Residential Tenancy Act* (the "Act") on June 29, 2023, seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Authorization to retain the security deposit and pet damage deposit against the amounts owed.

This hearing also dealt with the Tenants' Application for Dispute Resolution (Tenants' Application) filed under the Act on July 6, 2023, seeking:

- the return of their security deposit and pet damage deposit; and
- recovery of the filing fee.

Tenant M.R. attended the hearing for the Tenants.

Agents K.K. and B.W. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged service of each others Proceeding Packages and raised no concerns regarding service. I therefore found the parties duly served with the Proceeding Packages in accordance with the Act. The hearing of both Applications therefore proceeded as scheduled.

Service of Evidence

The parties acknowledged service of each others documentary evidence and raised no concerns regarding service. I therefore found the parties duly served with the

documentary evidence before me in accordance with the Act. The documentary evidence was therefore accepted for consideration.

Preliminary Matters

The surname listed for the Landlord in the Landlord's Application did not match the surname for the Landlord listed in either the tenancy agreement or the Tenants' Application. The agent for the Landlord K.K. confirmed that the name listed in the tenancy agreement and on the Tenant's Application is correct. The Landlord's Application was amended accordingly to correctly list the Landlord's surname.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retain the security deposit, the pet damage deposit, or both?

If not, are the Tenants entitled to their return or double their amounts?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

The parties disagreed about whether a valid tenancy agreement subject to the Act existed between them, despite the payment of both a security deposit and a pet damage deposit, and almost one full month of rent, as well as the signing of the agreement by S.R., who was listed as the guarantor. However, they agreed that the rental unit was never occupied by either M.R., the person named as the tenant in the tenancy agreement, or S.R., the person named as the guarantor in the tenancy agreement. The parties also disagreed about why it was never occupied, with each party blaming the other.

The agents stated that the fixed-term tenancy was originally set to commence on May 1, 2023, and that the start date for the tenancy was moved to May 15, 2023, at the request of M.R. The agents stated that after some back and forth with M.R. and S.R. about whether the tenancy would go forward, \$9,972.00 was paid to the Landlord by S.R. via wire transfer on May 5, 2023. The agents stated that after the deposits and first month's

rent were received, both S.R. and M.R. were emailed a copy of the tenancy agreement to be signed. The agents stated that although S.R. signed and returned the tenancy agreement and addendum that same day, on May 5, 2023, M.R. did not sign it despite their repeated requests.

Regardless, the agents argued that a tenancy agreement was nevertheless entered into between the Landlord, M.R. and S.R. (whom I will collectively referred to as the Tenants), after the Tenants' application was approved, agreement was reached between them via phone and email conversations on the terms and the start date for the agreement, \$9,972.00 was paid in deposits and rent on May 5, 2023, and S.R. signed the agreement as guarantor on May 5, 2023. The agents therefore argued that M.R.'s subsequent failure or refusal to sign the tenancy agreement is not determinative and does not mean that there was no tenancy agreement in place.

The agents stated that after the tenants were clear that neither M.R. nor S.R. intended to occupy the rental unit, it was advertised for re-rental and subsequently re-rented on June 24, 2023, at the same rental rate. The agents stated that the landlord is therefore seeking recovery of unpaid June rent in the amount of \$1,591.27, plus \$2,622.38 in liquidated damages in accordance with term 8 of the addendum.

The Tenant M.R. stated that due to ongoing court proceedings regarding their divorce from S.R., they requested that the start date be moved to July 1, 2023. M.R. stated that they never said that they were not going to move into the rental unit and in fact sent a signed copy of the tenancy agreement back to the agents on June 16, 2023, with an updated start date of July 1, 2023. However, M.R. stated that by that time, the Landlord refused to honour the tenancy agreement or let them move in. As a result, the Tenant argued that they should not owe the amounts sought and should be entitled to the return of the \$9,972.00 paid in deposits and rent.

Although the agents acknowledged receipt of M.R.'s request to move the start date of the tenancy to July 1, 2023, they stated that this was never agreed to by the Landlord as they had already moved the start date for the Tenant's once, and were unwilling to do so again. They denied refusing to honour the lease, stating that on May 27, 2023, the tenant had indicated by email that they had no intention of honouring the lease. As a result, the agents stated that the tenancy agreement was considered to have been broken by the Tenants, and was advertised for re-rental to mitigate loss. The agents stated that by the time they received M.R.'s email and altered tenancy agreement, they had already signed a tenancy agreement with new tenants for June 24, 2023.

The parties agreed that the Tenants provided a forwarding address in writing, which was delivered to the Landlord or their agents by registered mail on June 22, 2023.

Analysis

A significant amount of email correspondence between the parties was submitted for my consideration in relation to the tenancy. From the emails, the testimony of the parties, and the other documentary evidence before me, I have created the below timeline of events, which I have used in making this decision.

Date:	Details:
April 26, 2023	An agent for the Landlord emails M.R. and S.R. advising them that their application for a 6-month fixed term tenancy for the rental unit commencing May 1, 2023, was approved by the Landlord. A copy of the tenancy agreement was sent to the Tenants by an agent for the Landlord and information on the payment of the deposits and first month's rent was provided. The start date for the tenancy was changed from May 1, 2023, to May 15, 2023, at the request of M.R.
May 1, 2023	There is some back and forth between the agents, M.R., and S.R. via email about whether M.R. and S.R. intend to follow through with the tenancy. M.R. ultimately states via email at 11:39 AM that they are still very much interested and that they are just waiting on funds and the signing of a document by S.R. before they can move forward.
May 3, 2023	M.R. emails the agents for the Landlord indicating that they are now ready to proceed with the rental if the unit is still available. M.R. asks if the fixed-term will be from May 15, 2023 – November 15, 2023, and the agents state that the end of the fixed term can be either the end of October or the end of November. M.R. then states that S.R. will provide email confirmation when the wire has been sent the next day.
May 4, 2023	An agent for the Landlord emails M.R. and S.R. to advise them that there are other parties interested in the rental unit so they need to sign the documents if they are planning to proceed with the tenancy. M.R. replies to the above email stating that they are not able to sign the lease without funds in hand and an agreement in place between themselves and S.R. They also ask S.R. to respond immediately to wrap everything up or else they will have to back out of the tenancy.
May 5, 2023	A wire transfer in the amount of \$9,972.50 is received by the Landlord from S.R. for the deposits and most of the first month's

	rent. The agents send an electronic copy of the tenancy agreement and addendum to M.R. and S.R. for them to sign. The tenancy agreement and addendum are initialed and signed by S.R. via DocuSign. Both S.R. and M.R. are named in the section of the tenancy agreement provided for the purpose of naming the tenants, however, S.R. is also noted as a guarantor.
May 9, 2023	An agent for the Landlord emails M.R. and S.R. to remind them that M.R. has not yet signed the tenancy agreement and requesting that they do so.
May 10, 2023	An agent for the Landlord emails M.R. and S.R. again to remind them that M.R. has not yet signed the tenancy agreement and requesting that they do so. They also state that \$2,809.23 is the remaining balance of rent owed on June 1, 2023.
May 16, 2023	An agent for the Landlord emails S.R. and M.R. requesting an update ASAP on whether they intend to move in as a tenancy is in place, security and pet damage deposits and rent for May and a part of June have been paid, and the rental unit has been removed from the market. The agent asked that M.R. and S.R. let them know right away if they no longer plan to move in, so that they can proceed with next steps.
May 27, 2023	M.R. sends an email to the agents and S.R. stating that they cannot proceed with the rental until funds are received for the 6-month rental, presumably from S.R., as they are not confident in S.R.'s ability to pay for the unit. M.R. then provides details about ongoing court, family, and financial matters between themselves and S.R. and encourages the Landlord not to rent to S.R.
May 28, 2023	An agent responds to M.R.'s email stating that they are confused by it as the tenancy began on May 15, 2023, even though neither they nor S.R. have taken possession of the unit. The agent also states that if they are choosing not to move forward, they will proceed with lease break protocols and secure new tenants as soon as possible.
May 29, 2023	M.R. responds to the May 28, 2023, email stating that the landlord cannot hold the amounts already paid for rent and deposits, as the lease was never signed by them and threatens to take the matter to Supreme Court. A phone call subsequently occurs between M.R. and an agent. The agent follows up the phone call with an email reiterating the Landlord's position that a tenancy was established and has been ongoing since May 15, 2023. They also state that it is their understanding that M.R. does not wish to move in, and

	therefore the lease is being broken. The agent then provides information on potential costs associated with breaking the lease, such as loss of rent and liquidated damages.
June 7, 2023	An agent emails M.R. and S.R. with an update on their efforts to have the unit re-rented for July 1, 2023. They also remind them that \$2,809.23 is still owed for June rent.
June 19, 2023	M.R. emails the agents stating that they and S.R. were back in court and the court has ordered them to move forward with a rental. They attach an updated copy of the tenancy agreement originally signed by S.R. with a new tenancy start date of July 1, 2023, and asked for next steps.
June 20, 2023	<p>An agent responds to M.R.'s June 19, 2023, email stating that amending the start date of the tenancy agreement without the Landlord's agreement and then signing it does not mean that there is now a tenancy in place effective July 1, 2023. They reiterated the Landlord's position that a tenancy agreement was entered into when the parties agreed on terms and the deposits and first month's rent were paid, regardless of whether M.R. ever signed the written agreement or the fact that neither M.R. nor S.R. ever moved in. They stated that new tenants have been located and a new tenancy agreement signed for the rental unit with a tenancy start date of June 24, 2023. The agent stated that if the security and pet damage deposit are withheld, they and S.R. will still owe \$2,185.77 in outstanding rent for June. They also stated that liquidated damages will be waived.</p> <p>M.R. Responds to the agent's email stating that no tenancy was in place but that they are still happy to proceed with the tenancy for July 1, 2023.</p>

Is the Landlord entitled to recovery of unpaid rent?

Despite M.R.'s argument to the contrary, I am satisfied that a tenancy agreement was entered into between the Landlord and the Tenants. The Tenants applied to rent the unit and on April 26, 2023, their tenancy application was accepted by the Landlord. The parties then engaged in discussions via telephone and came to agreement on a start date. On May 3, 2023, M.R. stated via email that they are ready to proceed with the tenancy, and although there was some back and forth between the Tenants and the agents on May 4, 2023, regarding whether they would proceed, \$9,972.00 was paid to the Landlord via wire transfer on May 5, 2023, for the \$2,497.50 security deposit, the

\$2,497.50 pet damage deposit, and \$4,977.50 of the first month's rent. S.R. also signed and returned the tenancy agreement and addendum on May 5, 2023.

Based on the above, I am satisfied that S.R. has rights and obligations as a tenant, a guarantor, or both, under the tenancy agreement. Although M.R. never signed either the tenancy agreement or the addendum, I am also satisfied that they bear these same rights and obligations. Acceptance of a contract need not be in writing and can be expressed through words, deeds, or performance. As a tenancy agreement is a type of contract, I dismiss M.R.'s argument that acceptance of it may only be expressed in writing. In fact, section 1 of the Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit.

M.R. was clearly involved in viewing and applying for the rental unit and the negotiation of the terms and start date for the agreement as shown in the emails submitted by the parties for my consideration and on May 3, 2023, M.R. emailed the agents stating that they are ready to proceed with the tenancy. On May 5, 2023, the above noted amounts were then paid by S.R., who signed the tenancy agreement and addendum. Under these circumstances, I find it reasonable to conclude that M.R. therefore had a meeting of the minds with S.R. and the Landlord or their agents with regards to the terms of the tenancy agreement and their agreement to enter into it.

Based on the above, I am satisfied that the tenancy agreement was entered into by the parties on May 5, 2023. Section 16 of the Act states that 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. As a result, I find that the Tenants were required to comply with the terms of the tenancy agreement, even though they never moved in.

I am satisfied based on the tenancy agreement and emails that the tenancy commenced on May 15, 2023, and that rent in the amount of \$4,995.00 was due on the first day of each month. As the rental unit was never occupied by the Tenants and subsequently re-rented as of June 24, 2023, I therefore find that the tenants were only responsible for 40 days of rent between May 15, 2023 – June 23, 2023. I have calculated the per diem rental rate as \$164.22. As the Tenants paid \$4,977.50 towards rent on May 5, 2023, I therefore find that the Landlord is entitled to \$1,591.30 for the remaining balance owed.

Is the Landlord entitled to compensation for monetary loss or other money owed?

Although the agents sought recovery of \$2,622.38 in liquidated damages in accordance with term 8 of the addendum, I am satisfied that they waived their right to do so in an email dated June 20, 2023. I therefore dismiss the Landlord's claim for recovery of liquidated damages without leave to reapply.

Is the Landlord entitled to retain the security deposit, the pet damage deposit, or both? If not, are the Tenants entitled to their return or double their amounts?

I am satisfied that the Tenants paid a \$2,497.50 pet damage deposit on May 5, 2023. Section 1 of the Act defines a pet damage deposit as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet. Residential Tenancy Policy Guideline (Policy Guideline) #31 states that although a landlord may apply to keep all or a portion of a pet damage deposit, they may only do so to pay for damage caused by a pet.

The Tenants never occupied the rental unit and the Landlord made no claims regarding pet damage to the rental unit. As a result, I find that they were required to return the full amount of the pet damage deposit to the Tenants, plus any interest owed, within 15 days after they received the Tenants' forwarding address in writing. At the hearing the parties agreed that the Landlord received the Tenants' forwarding address in writing via registered mail on June 22, 2023. As a result, I find that the Landlord had until July 7, 2023, to return the pet damage deposit and interest to the Tenants, as they were not entitled to retain it or claim against it. As they did not do so, I find that the Tenants are therefore entitled to the return of double its amount, \$4,995.00, pursuant to section 38(6) of the Act, plus \$32.52 in interest owed on the base deposit amount as of January 2, 2024. In total, I find that the Tenants are owed \$5,027.52.

Despite the above, I am satisfied that the Landlord complied with section 38(1) of the Act in relation to the \$2,497.50 security deposit, as the Application claiming against it was filed on June 29, 2023. I find that the Landlord currently holds \$2,530.02 in trust for the Tenants as security deposit and interest. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain \$1,591.30 of this amount for the outstanding rent owed and I order the Landlord to return the remaining \$938.72 balance to the Tenants. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of \$5,966.24 for the return of double the amount of their pet damage deposit, the remaining balance of their security deposit, and interest owed on the base deposit amounts as of January 2, 2024.

Are the parties entitled to recovery of their respective filing fees?

As both parties had mixed success with regards to their Applications, I decline to grant either party recovery of their filing fee.

Conclusion

The following claims are dismissed without leave to reapply:

- The Landlord's claim for liquidated damages;
- The Tenants' claim for the return of their full security deposit; and
- The claims by both parties for the recovery of their respective filing fees.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain \$1,591.30 of the Tenants' security deposit and interest in recovery of the outstanding rent owed for June of 2023.

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of \$5,966.24 for the return of double the amount of their pet damage deposit, the remaining balance of their security deposit, and interest owed on the base deposit amounts as of January 2, 2024.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. I have not counted the date of the hearing, and the 30th day thereafter, December 31, 2023, is a Sunday. The office was therefore not open. As the following day was a statutory holiday, and the office was therefore still closed, I find that January 2, 2024, therefore constitutes the 30th day.

Regardless, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity nor the enforceability of this decision is affected if this decision and the associated order were issued more than 30 days after the close of the proceedings.

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 2, 2024

Residential Tenancy Branch