



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two of the Tenant's applications pursuant to the *Residential Tenancy Act* (Act) for:

- A monetary order of \$500.00 for compensation for monetary loss or money owed
- a Monetary Order of \$1,600.00 for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- Reimbursement of the filing fee for both applications
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Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters

At the outset of the hearing Landlord LY testified that they are the only Landlord, as listed and named on the Tenancy Agreement (TA). Both parties testified that DW is not a Landlord for the dispute before me today, and they agreed to an amendment of the Tenant's applications to remove DW as a named Landlord.

Based on the testimony of the parties, the TA, and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 4.2, I amended the Tenant's applications and removed DW as a Landlord for this dispute.

The Tenant testified that they paid a security deposit of \$750.00 and are seeking double the return of the security deposit, for the total amount of \$1,500.00. The Tenant incorrectly filed for the return of \$1,600.00 on their application. As per section 64(3)(c)

of the Act, I amend the Tenant's application and accept the amount of \$1,500.00 for the return of all of their security deposit under sections 38 and 67 of the Act.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for monetary loss or money owed?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

The parties agreed to the following details of this tenancy:

- This tenancy started on September 21, 2023, as a fixed term to end on March 20, 2024
- The Tenant's son (EG) occupied the rental unit during this tenancy, and vacated the rental unit on November 10, 2024
- The monthly rent of \$1,500.00 was due on the 21st day of each month
- The Tenant paid a security deposit of \$750.00, which the Landlord continues to hold in trust
- The parties did not complete a move in or move out Condition Inspection Report
- On November 8, 2023, the Tenant provided their forwarding address in writing to the Landlord.

The Tenant testified that on November 3, 2023, they provided their tenant's notice to end the tenancy (Tenant Notice), with the effective date of December 20, 2023 with the understanding that they were in violation of the fixed term lease.

The Tenant testified that the Landlord advised them of a prospective tenant who planned to occupy the rental unit by November 11, 2023. The Tenant stated that on November 7, 2023, EG stated they would vacate the rental unit by November 10, 2023, and this was a mutual agreement as per text message communication between EG and the Landlord. The Tenant stated that they followed up with email communication to the Landlord. The Tenant submitted the text message and email communication as part of their documentary evidence.

The Tenant stated that EG vacated the rental unit by November 10, 2023, and they are seeking the return of rent in the amount of \$500.00, that was paid for November 11, 2023 to November 21.

The Tenant stated that on November 9, 2023, the Landlord informed them that they have changed their mind and will not end the tenancy early, and that they will not return the security deposit or rent of \$500.00 to the Tenant.

The Landlord submitted email communications between them and EG as part of their documentary evidence. The Landlord testified that EG agreed to pay rent up to and including January 21, 2024 as they violated the fixed term contract. The Landlord testified that they did not return the security deposit given the Tenant's violation of the fixed term contract. The Landlord stated that the Tenant also owes outstanding utilities.

The Landlord stated that they started looking for a new tenant, however, were unsuccessful with their attempts. The Landlord stated that they did not agree to the early end of the tenancy.

Support Person DW for the Landlord stated that the tenancy did not end by way of a mutual agreement. DW stated that there was a prospective tenant for the rental unit and, therefore, the Landlord informed EG they can vacate by November 10, 2024. DW stated that the prospective tenant decided against the rental unit. DW stated that EG had agreed that they would pay rent until January 21, 2024, as per their email communication.

Analysis

Is the Tenant entitled to a monetary order for compensation for monetary loss or money owed?

Section 44 of the Act states the tenancy ends if the landlord and tenant agree in writing to end 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 is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has not established a claim for loss under the Act, regulation or tenancy agreement.

I find that the Tenant did not prove that the loss occurred due to the actions or neglect of the Landlord in violation of the Act, or the tenancy agreement. I find the tenancy was to continue as a fixed term tenancy until March 20, 2024, and the Tenant provided their Tenant Notice to end the tenancy earlier than they could as per the TA. I find the Tenant could not end the tenancy early, as per section 45 of the Act, and they are not entitled to the return of \$500.00 of rent.

Further, in this case, EG first provided notice to vacate the rental unit and the Landlord responded to this situation and tried to secure a new tenant for the rental unit, however, they were unsuccessful with their attempt to do so. I find the steps taken by the Landlord were reasonable and acceptable actions in such a situation. Further, I find the Landlord took immediate steps to inform the Tenant that the prospective client is not moving into the rental unit and they do not agree to terminate the fixed term contract.

Based on the above and with the absence of a signed agreement in writing, such as the RTB Mutual Agreement form signed by both parties, I find the tenancy did not end by Mutual Agreement with the requirement for the Landlord to return rent of \$500.00.

I find the Tenant did not incur loss due to the Landlord's non-compliance with the Act, regulation or tenancy agreement. I decline to award the Tenant the amount of \$500.00.

For the above reasons, the Tenant's application for a Monetary Order for compensation for money owed or loss under the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38(4) allows a landlord to retain from a security if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in

writing, whichever is later, the landlord must either repay any security deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence before me, I find the Landlord received the Tenant's forwarding address on November 8, 2023. I find the Landlord did not have the Tenant's agreement in writing to keep the security deposit. Further, I find the Landlord did not apply for dispute resolution within 15 days of receiving the Tenant's forwarding address or of the tenancy ending on November 10, 2023, or the end of the fixed term tenancy date of March 20, 2024, to retain a portion of the security deposit as required under section 38(1).

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the amount of the deposit as they have not complied with section 38(1) of the Act.

Therefore, I find the Tenant is entitled to a Monetary Order of \$1,510.12, representing an amount equal to double the security deposit, under sections 38 and 67 of the Act, plus interest. The \$750.00 deposit has accrued \$10.12 in interest.

The Landlord stated that the Tenant breached the fixed term contract and failed to pay utilities so owes rent and utilities. As neither issue is properly before me, I have not considered them. The Landlord is at liberty to file an application for such under the Act, but I make no finding as a result.

Is the Tenant entitled to recover the filing fee for both applications from the Landlord?

As the Tenant was not successful for their application for a monetary order for compensation for monetary loss or money owed, I decline to award them the filing fee for this application.

As the Tenant was successful in their application for the return of their security deposit, I find that the Tenant is entitled to recover the \$100.00 filing fee under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$1,610.12** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for double the return of their security deposit, plus interest.	\$1,510.12
Authorization to recover the filing fee for one of their applications from the Landlord under section 72 of the Act.	\$100
Total Amount	\$1,610.12

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 19, 2024

Residential Tenancy Branch