



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

Decision

Introduction

Dispute codes: MNSDB-DR, FFT (Tenant's Application) and MNDCL, FFL (Landlord's Application).

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on January 20, 2024, wherein they seek the return of their security deposit and pet damage deposit, in the aggregate amount of \$2,250.00. The Tenant is also seeking to recover their \$100.00 filing fee from the Landlord.

The Landlord filed their application on February 6, 2024. The Landlord seeks a monetary order in the amount of \$6,750.00 for damage they say they suffered when the Tenant ended their fixed term tenancy early. The Landlord is also seeking to recover their \$100.00 filing fee from the Tenant.

The Tenant attended the hearing alongside their agent and witness MC. The Landlord attended the hearing alongside their agent and witness TG.

Service of Records

Both parties acknowledged receipt of their counterparty's Proceeding Package and documentary evidence, by registered mail. Neither side raised issues regarding service of records in relation to either application and supporting evidence; accordingly, I find both parties served their counterparty with their applications and documentary evidence in accordance with sections 88 and 89 of the *Act*.

Background Facts, Evidence, and Preliminary Findings

I have considered the parties' testimonies and submitted records, as well as the testimony of each party's agent and witness, but I will refer only to what I find relevant to my decision.

TG testified that this tenancy began on August 1, 2023, and it ended twenty days later, on August 20, 2023. The Tenant testified that they moved out of the Rental Unit on August 20, 2023. **I find**, based on the parties' testimonies, that this tenancy ended on August 20, 2023.

Both parties submitted a copy of the tenancy agreement, which states that this tenancy is for a fixed period of one year, beginning on August 1, 2023, and ending on July 31, 2023 (the **Tenancy Agreement**). The parties agreed that the ending year written in the Tenancy Agreement should have been 2024, not 2023 and that this was a typographic mistake. **I find**, based on the evidence before me and the testimony of the parties, that the July 31, 2023, end date was intended to be written as July 31, 2024. I further find that the parties in this case intended to create a fixed term tenancy of one year, beginning on August 1, 2023, and ending on July 31, 2024.

The parties agreed that the monthly rent for this tenancy was \$2,250.00, due on the first day of every month. The parties further agreed that the Tenants paid a security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00 to the Landlord on June 20, 2023.

The Tenant and their witness testified that they sent the Landlord their forwarding address in writing, by registered mail, on September 1, 2023, to the Landlord's address as stated in the Tenancy Agreement.

The Landlord and their witness testified that the Landlord never received the Tenant's forwarding address, because the Landlord was outside of the country from approximately August 22, 2023, to mid-October 2023. TG testified that the Landlord's residence was unoccupied while the Landlord was away. TG and the Landlord testified that they never informed the Tenant that no one was present at the Landlord's residence during this time, nor did they provide the Tenant an alternative address for service.

The Tenant submitted a prescribed #RTB-41 Proof of Service form in relation to their forwarding address, as well as a prescribed #RTB-47 Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form which they say they forwarded to the Landlord by registered mail in September 2023.

MC provided the tracking number associated with the registered package containing the Tenant's forwarding address. I have copied the associated tracking number on the cover page of my decision.

The Tenant submitted a photo of an envelope bearing the Landlord's name and address, a Canada Post Customer Receipt sticker with a tracking number ending in the digits and letters 306CA, and a Canada Post sticker stating that the registered letter is destined for a postal code that matches the Landlord's postal code (as stated on page one of the Tenancy Agreement).

The Landlord did not submit any travel documents showing they were not present in Canada and the only evidence before me that they were away was the self-serving testimonies of the Landlord and their agent. In any case, the Tenant is not clairvoyant. If no one is present at the address for service indicated in the Tenancy Agreement, the Landlord must make alternative arrangements (such as mail forwarding or inform the

Tenant of another address). When the registered mail was returned to the Tenant undelivered in November 2023, the Tenant has no way of knowing if the package went unclaimed on purpose or because the Landlord was away.

Policy Guideline 1 states that (underlined for emphasis):

Where a record is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the record was not received or evidence of the actual date the record was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the record has been sufficiently served, and the date on which it was served.

I am not convinced, based on the limited evidence before me, that the Landlord was away during the relevant period.

I find, based on all the above, pursuant to section 90 of the *Act*, that the Landlord is deemed served with the Tenant's forwarding address in writing, on September 6, 2023, the fifth day after the registered mailing (a recognized form of service under section 88 of the *Act*).

The parties agreed that no start of tenancy or end of tenancy condition inspection reports were completed in accordance with the *Act* and the *Residential Tenancy Regulation* (the *Regulation*).

The Tenant is seeking the return of their deposits. The Landlord is seeking compensation for damages resulting from the Tenant's contravention of the *Act*, namely the Tenant's early departure from the Rental Unit.

MC testified that on August 15, 2023, the Tenant and the Landlord reached an agreement that the tenancy would end on August 20, 2023, at which time the Landlord would return the Tenant's security deposit and pet damage deposit, as well as part of their August 2023 rent (on a prorated basis).

TG disputed MC's testimony and testified that the Landlord and the Tenant's family had two separate tenancy agreements. TG testified that the first is the subject of this dispute. TG testified that the Landlord had a separate agreement with the Tenant's spouse, whereby the Tenant's spouse would rent a bedroom from the Landlord for \$550.00 per month. TG testified that the Landlord and the Tenant reached an

agreement whereby a portion of the \$550.00 payment would be refunded, which the Landlord did refund when that tenancy also came to an end on August 20, 2023.

TG testified that on August 20, 2023, when both tenancies had already come to an end, the Tenant demanded the return of their deposits and partial refunds for both tenancies' August 2023 rent payments, but TG and the Landlord refused. TG testified that the Tenant then demanded to be allowed to return to the Rental Unit and continue their tenancy, but the Landlord and TG blocked them from doing so.

MC agreed that the parties had a separate agreement for \$550.00, but they testified that the Tenant never received a partial refund for that amount either.

During the hearing, MC initially held that this tenancy came to an end by mutual agreement on August 15, 2023, but they then testified that the Landlord terminated the agreement on August 20, 2023 (perhaps predicated on the Landlord and TG blocking the Tenant's family from re-entering the Rental Unit).

In their application, the Landlord has stated the following (copied verbatim):

"We signed one year fixed term Residential Tenancy Agreement, But they only stay for 20 days, massaged me 5days to move out before they leave. I want to request: All deposit (security deposit & Pet deposit) 2 Monthly payments".

The Landlord and their agent testified that after this tenancy ended, they attempted to re-rent the Rental Unit, but they did not submit any documentary evidence of their efforts, nor did they submit a copy of any new tenancy agreements. The Landlord and their witness testified that they signed a new tenancy agreement with a third party, which began on November 7, 2023, with a monthly rent of \$2,250.00.

Both parties referred me to text messages and "voice note" transcripts at the heart of this dispute, from August 15, 2023 (the **Voice Note Transcripts**). The parties agreed that the Voice Note Transcripts submitted by the Landlord are English translations of Mandarin transcripts generated from two voice notes from August 15, 2023. The Tenant and their witness did not dispute the accuracy of the translations. I have reviewed the Voice Note Transcripts, and I invited the parties to provide context, which they did.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has the responsibility to provide evidence over and above their testimony to prove their claim.

The standard of proof in this tribunal is balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

- *Security and Pet Damage Deposit*

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

In this case, the Landlord failed to meet their obligations to schedule a condition inspection at the start of this tenancy. However, it is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*, because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for loss of rent, which is not damage.

I have already found that this tenancy ended on August 20, 2023, and that the Landlord is deemed served with the Tenant’s forwarding address on September 6, 2023.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants’ forwarding address in writing to repay the security and pet damage deposits or file a claim against them. In this case, the Landlord had until September 21, 2023, to file a claim against the Tenant’s security and pet damage deposit. The Application was filed on February 6, 2024.

Therefore, I find the Landlord failed to comply with section 38(1) of the *Act*. Given this, and pursuant to section 38(6) of the *Act*, **the Landlord must return \$2,274.17** to the Tenant, which is double the security deposit paid by the Tenant, along with accrued interest calculated on the original \$1,125.00 portion paid by the Tenant on June 20, 2023, to May 29, 2024, in the amount of \$24.17.

In addition, Policy Guideline 31 addresses pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (bold emphasis added)

The Landlord has not made any claims in relation to pet damage in their application, even if they had met the timing provisions outlined under section 38 of the *Act*.

Therefore, the Landlord had to return the Tenants’ pet damage deposit to the Tenants within 15 days of receiving the Tenants’ forwarding address in writing. I note that to date, the Landlord has not returned either deposit, even after the Landlord received the Tenant’s application.

I find the Landlord failed to return the Tenants' \$1,125.00 pet damage deposit within 15 days of receiving the Tenant's forwarding address in writing. Therefore, I find the Landlord failed to comply with section 38(1) of the *Act*. Given this, and pursuant to section 38(6) of the *Act*, **the Landlord must return \$2,274.17** to the Tenant, which is double the pet damage deposit paid by the Tenant, along with accrued interest calculated on the original \$1,125.00 portion paid by the Tenant on June 20, 2023, to May 29, 2024, in the amount of \$24.17.

As the Tenant was successful with their application, per section 72 of the *Act*, I award them their \$100.00 filing fee, to be collected from the Landlord.

I will now address the Landlord's claims.

- *Landlords' Claims for Loss of Revenue*

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. The Residential Tenancy Branch Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the *Act* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

The Landlord is claiming a loss of rental revenue in the months of September 2023, and October 2023. During the hearing, TG testified that a landlord cannot physically stop a tenant from ending their tenancy if they wish to end it. I agree. However, my task is to determine whether the Tenant *unilaterally* ended this tenancy or whether the parties, by *mutual agreement*, ended this tenancy.

I find, based on my review of the Voice Note Transcripts, that this tenancy came to an end by mutual agreement. The following is the English translation of the Tenant's initial "voice note" provided to me by the Landlord:

Ok, like this, because we still don't sure about the house, but I think should be fine for short term rental, just transition in this neighbourhood, now basically we just want to find friends on this weekend, because we have kids and our stuff on this weekend to help us move out. We want to resolve this on this weekend, want to double check with you, for example if we move out next Sunday, we all clean up, then you done checking, then deposit return to us, the extra, like the ten more days extra payment you will return to us, then we give you keys, like this process.

The Tenant states "If we move out next Sunday, we all clean up, then you done checking, then deposit return to us [...] then we give you keys, like process". I find this to be an offer made by the Tenant. The Landlord's agent's response to the offer, as provided to me by the Landlord, is as follows:

So Sunday is your date now?
Then you have to be 12 o'clock before on Sunday, can't be late for 12, because that will be count for other day, just let you know. for process, if you already set the day on Sunday, we need to set a time, if you can be little earlier that will be great, up to you, then for example if is Sunday, at 12 o'clock that's all clean up, then we went in check, if hardware is ok, all clean up don't need more cleaning, then we will return deposit to you, extra days fees return to you, if nothing damaged.

Ok, let's do this Sunday At 11:00

August 20

Ok, August 20 at 11:00

The Landlord's agent accepts the Tenant's offer and further states that the Tenant cannot be late, "because that will be count for other day". I find it more likely than not that the Landlord's agent was referring to the Tenant's request that they receive the

prorated amount of rent back for the month of August 2023. The Landlord's agent explicitly states that they will return the Tenant's deposit to them.

TG testified that the above exchange regarding the return of partial rent payment was in relation to the \$500.00 tenancy. Even if that is the case, I find, based on my reading of the exchange, that the parties were negotiating an end to both tenancies. There is no evidence before me that Tenant's spouse paid any deposit pursuant to the \$500.00 agreement. In addition, the Landlord's agent is clearly negotiating with the Tenant in relation to the Tenant vacating the Rental Unit on August 20, 2023. In any case, the Tenant is not requesting the return of partial August rent and this issue is mostly moot. What is clear to me, however, is that the August 15, 2023, offer from the Tenant was accepted by the Landlord's agent and the Landlord's agent agreed that this tenancy will come to an end and the Tenant will receive their deposit back.

In the alternative and if I am wrong in my analysis above, I turn my mind to the possibility that the Tenant did contravene the *Act* by unilaterally ending their tenancy early. In such a scenario, the Landlord must still meet their duty to mitigate losses. A duty to minimize loss is an ironclad duty under common law and codified under section 7 of the *Act*, which I have summarized above. Further, the Residential Tenancy Branch Policy Guideline 5 provides:

If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied.

In this case, the Landlord did not submit any documentary evidence of their efforts to re-rent the Rental Unit. I only have the self-serving testimony of the Landlord and their agent that they attempted to re-rent the Rental Unit and that they were successful in the month of November 2023. I do not have a copy of the new tenancy agreement to determine at what rate the Landlord managed to re-rent the Rental Unit. I do not have any information about the Landlord's efforts.

Further, the Tenant, upon realizing that the Landlord was not intending to return their security deposit and pet damage deposit, along with the prorated portion of their August 2023 rent, requested that they be allowed to return to the Rental Unit to re-start their tenancy. The Landlord's own agent acknowledged that the Landlord decline this offer.

For all the above reasons, even if the Tenant did contravene the *Act*, I would decline the Landlord's claim because I find the Landlord failed to establish that they mitigated their losses.

I dismiss the Landlord's application to recover the filing fee from the Tenant, because the Landlord was unsuccessful in this application.

Conclusion

I dismiss the Landlord's application in full, without leave to reapply. The Tenant's application is granted. I grant the Tenant a Monetary Order in the amount of **\$4,648.34**, which sum represents the following:

- \$1,125.00 security deposit, doubled, along with accrued interest in the amount of \$24.17, calculated from June 20, 2023, to May 29, 2024, pursuant to section 38 of the *Act*.
- \$1,125.00 pet damage deposit, doubled, along with accrued interest in the amount of \$24.17, calculated from June 20, 2023, to May 29, 2024, pursuant to section 38 of the *Act*.
- \$100.00 filing fee, pursuant to section 72 of the *Act*.

The Tenant is provided with the attached Monetary Order in the above terms, which must be served to the Landlord 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 *Act*.

Dated: May 29, 2024

Residential Tenancy Branch