



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, LRSD, FFL, MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the *Act*)

The Landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The Tenants applied for:

- authorization to obtain a return of all or a portion of their security and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

All parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to recover the filing fee for this application from the tenant?
Are the Tenants entitled to the return of their security and pet deposit?
Are the Tenants entitled to the recovery of the filing fee from the Landlord for this application?

Background and Evidence

The parties agreed to the following. The tenancy began on May 1, 2023 and ended on October 31, 2024. The parties signed a second one-year fixed term agreement on May 1, 2024 that was to expire on April 30, 2025. The monthly rent of \$2,225.00 was due on the first day of the month. The Tenants paid security deposit of \$1,1100.00 and a pet deposit of \$1,000.00. The Landlord testified that on September 11, 2024 the Tenants "told him" they would move out on November 1, 2024. The Landlord testified that there wasn't a discussion about what terms he would agree to but rather a hard date that the tenancy would end without his authorization to do so.

The Landlord testified that it was a firm statement from the Tenants that they would be moving out. The Landlord testified that he immediately began advertising the unit to rent and even lowered the rent by \$250.00. The Landlord testified that he rented the unit for December 1, 2024. The Landlord requests \$2,225.00 in lost revenue for November and the recovery of the \$100.00 filing fee.

BB testified that there was a mutual agreement to end the tenancy by email. BB testified that they wouldn't have moved out if there was going to be issues. NS testified that they were operating under the belief that they had an agreement and that there were no issues for them to move out until about ten days prior to move out. BB testified that they feel that the mutual agreement is clear and that the Landlord is bound by it. NS testified that the Tenants should be entitled to the return of both deposits and the recovery of the filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here.

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from May 1, 2024 to April 30, 2025.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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, that rent is payable under the tenancy agreement.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenants vacated the rental unit on October 31, 2024, before the completion of the fixed term on April 30, 2025. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

I do not agree with the Tenants assertion that they had a mutual agreement to end the tenancy. The Landlord did not relieve them of their responsibilities nor was there a signed agreement of same. Based on the evidence before me, I find that the Tenants ended the tenancy prematurely without sufficient justification.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the Tenant's intention to vacate the rental unit. The Landlord posted an online rental the same day the Tenants gave notice to end their tenancy. The Landlord made efforts to re-post and renew the advertisements to preserve priority on the website. The Landlord also reduced the rent by \$250.00 per month to obtain a new tenant and did so for December 1, 2024. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

Based on the above, I find that the Landlord is entitled to \$2,225.00 for lost revenue for November 2024. The Landlord is also entitled to the recovery of the \$100.00 filing fee for a total award of \$2,325.00. The Landlord holds \$2,100.00 in deposits along with the accrued interest of \$86.14. I order that the Landlord retain that amount in partial satisfaction of their claim. Pursuant to section 72 of the *Act*, I apply those amounts to the Landlords total award \$2,325.00 minus \$2,186.14 leaving a balance owing to the Landlord of \$138.86.

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.

The Landlord is entitled to retain the security and pet deposit and the accrued interest. The Landlord is granted a monetary order of \$138.86.

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 20, 2025

Residential Tenancy Branch