



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application for an a Monetary Order for Money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

Both parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that a fixed term tenancy agreement for 1 year was put in place on July 05, 2011. It was also agreed that the tenancy would start on August 01, 2011 for a monthly rent of \$1,950.00 to be paid on the first day of each month. A security deposit of \$1,950.00 was also documented as due on the tenancy agreement.

The tenants testify that during the negotiations for this unit the landlord requested a reoccurring electronic bank transfer to be completed for the rent. The tenants state they arranged this with their bank and took the appropriate forms to the landlord on July 05, 2011 when they met to sign the tenancy agreement. The tenants had already brought with them a check for the sum of \$975.00 for the security deposit. The tenants testify both parties signed the tenancy agreement.

The tenants testify that on July 13, 2011 the landlord's agent told him they must pay the rent for August, 2011 now if they wanted to rent the house and the landlord wanted 11 posted cheques for the following 11 months. The tenants state the landlord wanted another \$975.00 security deposit so they wrote two separate cheques for this amount. The tenants state as they had just had to pay double the allowable amount of the security deposit they told the landlord that the rent for August will be paid on August 01, 2011 according to their tenancy agreement. The tenant states they did agree to pay the first month's rent on August 15, 2011 however this was not acceptable to the landlord's agent. The tenants state the landlords agent told them if they did not have this much money available they could not demonstrate that they could afford to pay the rent.

The tenants testify that the landlord's agent tried to change the terms of the lease agreement and told them they could not move into the rental unit. The tenants testify they had already given Notice to end their tenancy on their rental unit so had to find alternative accommodation at short notice. The female tenant and their children had to live elsewhere for August and the male tenant had to stay at his father's house until they could secure alternative accommodation for September 01, 2011. The tenants testify that they found another comparable house in the same area with the same square footage, same amount of rooms and same services and facilities but for a higher rent of \$2,300.00 per month. The tenants seek to recover the difference in rent between what they had agreed to pay for this landlord's house and their new house of \$400.00 per month for the term of their original tenancy agreement. (Original and new tenancy agreements provided). The tenants have revised this figure to \$350.00 per month for 11 months during the hearing to the total sum of \$3,850.00.

The tenants seek to recover storage and transport costs for their belongings for the month they were without a home to the sum of \$718.00. This sum includes storage fees, and additional moving costs from the storage facility to their new home. (Invoice provided). The tenants also seek to recover their \$50.00 filing fee for this application.

The landlords dispute the tenants' claims. The landlord's agent testifies that he was not present when the tenants signed the lease agreement but later he called the tenants and requested post-dated cheques for the term of the tenancy and \$1,950.00 for the security deposit as the tenants could not verify their income. The landlord's agent states the pre-authorised debit form did not have the landlords name on it and did not contain a draft for the security deposit. The landlord's agent states he called the tenants the next day as they had not provided the post-dated cheques and kept delaying making the security deposit payment.

The landlord's agent testifies that the tenancy agreement states the lease will not be executed unless a security deposit is paid. Because of this the landlord's agent testifies that he decided to terminate the lease.

The tenant disputes the landlord's agent testimony. The tenants state the pre-authorised bank form was correct and had been stamped by the bank teller (copy provide in evidence). The tenant states the cheques for the security deposit were ready for the landlord and he was not entitled to overturn the tenancy agreement because they did not pay rent for the first month prior to the start date of the tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for the difference in rent between this landlords house and the new house rented by them. A landlord is not entitled to change the terms of a tenancy agreement once it has been put in place and is not entitled to end a fixed term tenancy for unpaid rent or because a filing fee has not been paid unless the tenants have not paid the rent on the day it is due which in this case was August 01, 2011 and the

filing fee is not paid within 30 days of the start of the tenancy. The landlords agent argues that as the tenants did not pay the security deposit when they signed the lease agreement that he was entitled to cancel the agreement due to a clause within the agreement which states the agreement will not be executed if the security deposit is not paid.

I find the tenants testimony to be straight forward and credible that they had the correct amount of security deposit in the form of a cheque made payable to the landlord available when they signed the tenancy agreement and it was the landlords agent who requested double this amount from the tenants in direct contravention of s 19 of the *Act* which states;

A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

Consequently, I find the landlord had no grounds to end the tenancy before the end of the fixed term or in this case before it started and find the tenants incurred costs in paying a higher rent for a comparable house which they would not have incurred had the landlord not breached the *Act*. Therefore, it is my decision that the tenants are entitled to recover this extra rental cost from the landlord for eleven months of their new tenancy to the sum of **\$3,850.00**.

I further find the tenants would not have incurred additional costs for storage and transport of their belongings to their new house and find they are also entitled to recover this cost of **\$718.00** from the landlord.

As the tenants have been successful with their amended claim I find they are also entitled to recover their **\$50.00** filing fee from the landlord. A Monetary Order has been issued to the tenants for the following amount pursuant to s. 67 and 72(1) of the *Act*.

Difference in rent for 11 months	\$3,850.00
Storage and transport costs	\$718.00

Filing fee	\$50.00
Total amount due to the tenants	\$4,618.00

Conclusion

I HEREBY FIND in favor of the tenants' amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,618.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: November 22, 2011.

Residential Tenancy Branch