



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNSD, MNDC, FF
 Tenants: MNSD, O, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the male landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for lost revenue; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

In the alternative it must be decided if the tenants are entitled to a monetary order for the return of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on December 29, 2011 for a 1 year fixed term tenancy beginning on February 1, 2012 for a monthly rent of \$950.00 per month (including hydro) due on the 1st of each month with a security deposit of \$450.00 paid on January 6, 2012. The agreement also stipulate a pet damage deposit of \$450.00 to be paid in two instalments of \$225.00 each on February 1, 2012 and March 1, 2012.

The landlord has provided the following additional documents into evidence:

- A copy of a Condition Inspection Report signed by the female tenant and the male landlord on January 15, 2012 for the move in inspection and on January 19, 2012 for the move out inspection;
- A copy of email correspondence between the two parties dated January 6, 2012 regarding payment of the security deposit;
- A copy of email correspondence between the two parties dated January 14, 2012 and January 15, 2012 regarding early possession of the unit and the landlord's agreement to give the tenant's keys and complete the move in inspection on January 15, 2012, including a thank you from the female tenant for "letting us have the keys.";
- A copy of an email from the female tenant to the landlords dated January 17, 2012 stating that both tenants have lost their sources of income and that they will be staying with her parents and asking for the security deposit back from the landlords;
- A copy of a handwritten notice from both tenants dated January 17, 2012 indicating the tenants wish to end the tenancy immediately and the tenants forwarding address; and
- Copies of online advertising for the rental unit for ads online for the period January 18, 2012 to March 26, 2012, including a reduction of \$100.00 in the amount requested for rent in the latest posting.

The tenants submit that after they signed the tenancy agreement the landlord added a pet damage deposit without any discussion prior to signing the agreement. They also submit that the landlord did not tell them that they would charge additional rent for the tenants moving in early (prior to February) on a per diem basis prior to signing the tenancy agreement.

The tenants also indicated that after the agreement had been signed the landlords wanted to restrict the use of laundry facilities to only a couple of days a week which wouldn't work for the tenants.

In their written statement the tenants submit "...all this combined led to us asking that both parties walk away and Bryan mutually agreed. In the hearing the tenants clarified that because the landlord suggested he would be returning the security deposit they understood him to mean that he was agreeing to the end of the tenancy.

They further clarified that if they had realized the landlord intended to seeking compensation they would have tried to work it out with the landlord and even try to move in and make it work with the landlord.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 16 of the *Act* stipulates 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 the parties entered into the tenancy agreement on December 29, 2011 I find both parties are subject to the terms of the tenancy agreement despite the fact the tenants never moved in.

Section 44 states a tenancy may end, among other reasons, if the tenant gives the landlord a notice to end the tenancy in accordance with Section 45 or if the landlord and tenant agree in writing to end the tenancy.

From the evidence before me, I find the landlord has provided copies of an email notice and a handwritten notice from the tenants indicating their desire to end the tenancy. In the email notice the tenants indicate the reason the must end the tenancy is because they cannot afford the rent due to changes in their circumstances.

Neither party has provided a written agreement between the parties to mutually agree to end the tenancy. As such, I find the tenancy ended as a result of the tenant's initiation to end the tenancy based on the email and handwritten notices.

Section 45 states a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The section goes on to say that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As the tenants provided no evidence that the landlord had failed to comply with a material term of the tenancy agreement or that they had provided the landlord with written notice of any failure to comply with a material term, I find the only alternative would be to end the tenancy by giving notice to end the tenancy effective on the date specified in the tenancy agreement as the end of the tenancy.

As the date for the end of the tenancy in the tenancy agreement is stipulated as January 31, 2013, I find the tenants have failed to comply with the *Act* and tenancy agreement and are responsible for the payment of rent for the duration of the tenancy. However, as the landlord has submitted this Application prior to the end of the tenancy and is seeking compensation only for lost revenue for the months of February and March 2012, my decision is limited only to this time period.

From the landlord's testimony and in the absence of any evidence to the contrary, I accept the landlord has not been able to rent the unit to new tenants for the months of February and March 2012 and I find the landlord has suffered a loss as a result.

From the tenancy agreement, I note the rent is listed as \$900.00 plus \$50.00 for other fees, specifically "1/3 hydro for house" for a "total rent and fees" of \$950.00. Rent is defined in Section 1 of the *Act* as money paid by a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for service or facilities.

I find that the inclusion of an ongoing monthly rate that does not fluctuate for the purposes of hydro and identified as a constituent part of the total amount of rent is rent and I accept the landlord has established the value of the monthly rent to be \$950.00. In conjunction with my findings above, I find the landlord has suffered a loss of \$1,900.00 as result of the tenants ending the tenancy prior to the end of the fixed term.

Section 7 of the *Act* states that if a landlord claims compensation for damage or loss that results from the tenant's non-compliance with the *Act*, regulations or tenancy agreement the landlord must do whatever is reasonable to minimize the damage or loss.

I find the landlord has taken reasonable steps to try to re-rent the unit including by reducing the price expected for rent in the local mediums available for advertising including online and print ads. As such, I accept the landlord has taken reasonable steps to mitigate the loss suffered because of the tenants' non-compliance with the *Act* and tenancy agreement

Conclusion

For the reasons noted above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,950.00** comprised of \$1,900.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,500.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

For the reasons above, I dismiss the tenants' Application in its entirety.

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: March 28, 2012.

Residential Tenancy Branch