



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This application was originally scheduled to be heard with the tenants' application in November 2014, but was adjourned as the tenants had not yet received the landlords' dispute resolution package.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant MR (the tenant) appeared for both tenants.

The landlords testified that they served the tenants with the notice of dispute resolution on 28 November 2014 by registered mail. The tenant confirmed that the tenants had received the notice of dispute resolution on 4 December 2014. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 16 November 2013. Monthly rent of \$810.00 was due on the first. On 16 November 2013, the landlords collected \$810.00 in total deposits: a security deposit of \$405.00 and a pet damage deposit of \$405.00. Effective 1 October 2014, monthly rent was reduced to \$720.00.

The landlords testified that the tenants notified the landlords that the tenants would be vacating the unit 15 November 2014. The landlords agreed to this date. The tenant testified that the tenancy ended because the landlords breached a material term.

The landlords testified that when they attended at the rental unit on 1 November 2014, they found the tenant removing the last of the tenants' belongings from the rental unit. The landlords testified that it was unclear if at this time the tenants had abandoned the rental unit.

The landlords testified that when they saw the tenant they asked him when they would be receiving a half month of rent for November and the tenant told the landlords that the first of the month was not yet over. The landlords testified that they had not received any payment for November's rent. The landlords testified that the tenants have rental arrears for November in the amount of \$360.00. The landlords claim this amount plus their filing fee.

The tenant submitted that the tenants do not have rental arrears as they were permitted to terminate the tenancy because of the landlords' breach of a material term and because the tenants did not have exclusive possession of the rental unit beyond 31 October 2014. In support of their position, the tenant testified that the landlords had a worker enter the rental unit to do some repairs. The tenant testified that he did not receive notice of the worker's entry.

The landlord PK testified that the worker entered the rental unit twice. The landlord PK testified that they provided 24-hours' written notice to the tenants of the worker's entry to the unit. The landlord PK testified it was difficult to reach the tenants. The landlord PK testified that he attempted to call the tenant two or three times and that he left voice

messages each time. The landlord PK testified that he emailed the tenant two or three times and that the tenant did not respond.

The landlord KR testified that she conducted a move-out inspection with the tenant on 15 November 2014 in the afternoon. The landlord testified that the tenants returned the keys to the rental unit on 15 November 2014. The tenant testified that he did not arrange to return the keys to the landlords prior to 15 November 2014.

The tenants did not submit as evidence any written notice to end tenancy at a date on or before 31 October 2014.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. If the tenancy had ended, then the tenants would not have an obligation to pay rent under the Act.

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree; or
- the tenant abandons the rental unit.

Subsection 45(3) of the Act allows a tenant to end a tenancy for breach of a material term:

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

Subsection 45(4) sets out that a notice under section 45 must comply with the form and content set out in section 52. Section 52 sets out, among other things, that a notice to end tenancy must be in writing.

The tenant did not provide me with any evidence that the tenants provided notice to the landlords that the tenancy would end on or before 31 October 2014. Further the tenants did not conduct themselves as if the tenancy had ended on or before 31 October 2014.

For example, the tenants did not arrange to return the keys to the landlords prior to 15 November 2014. I find that the landlords conducted themselves appropriately in the provision of notice of their worker's entry. I find, on a balance of probabilities, that the landlords gave the tenants notice of the worker's entry to the rental unit that complied with the Act. I find that the tenants and landlords acted at all times as if the tenancy continued until 15 November 2014. In the absence of written notice from the tenants, I accept that the tenant and landlord mutually agreed to end the tenancy as of 15 November 2014. Thus, I find that the tenancy ended 15 November 2014 on the mutually agreed to date.

The landlords have established that they are entitled to partial rent for November in the amount of \$360.00. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application. I find that the landlords are entitled to a monetary order in the amount of \$410.00.

The landlords testified that they continue to hold the tenants' security and pet damage deposits totaling \$810.00, plus interest, paid on 16 November 2013. Over that period, no interest is payable. Although the landlords' application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlords to retain a portion of the deposits in full satisfaction of the monetary award.

Conclusion

I order the landlord to recover \$410.00 from the tenants by allowing the landlords to retain \$410.00 from the total of the security and pet damage deposits for this tenancy. I order that the combined value of the security deposit and pet damage deposit for this tenancy is reduced from \$810.00 to \$400.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 22, 2014

Residential Tenancy Branch

