



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for a refund of the tenants' prorated rent pursuant to subsection 50(2) of the Act; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

All 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 landlords accepted service of the tenants' dispute resolution package and evidence.

The landlord DW confirmed the landlords had sufficient time to review the tenants' evidence.

Prior Proceedings

This tenancy was subject to an earlier application by the landlords. A decision in that application was rendered 15 January 2015.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent the remainder of the month's rent pursuant to subsection 50(2) of the Act? Are the tenants entitled to recover the filing fee for this application from the landlords?

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 tenants' claim and my findings around it are set out below.

The parties agree that the tenancy began in October 2013. Monthly rent was \$1,500.00 and payable on the first of the month.

On 16 August 2014 the landlords issued a 2 Month Notice to End Tenancy for Cause (the 2 Month Notice). That notice set out that the tenant had to vacate the rental unit by 31 October 2014.

On 27 September 2014 at 2345, the tenants' agent personally served the landlords with a notice to end the tenancy:

[address of rental unit]

27 September 2014

[landlords]

Please consider this to be 10 days (sic) notice to end our tenancy at the address above. On October 7th 2014, the home will be vacated and left clean and in the condition it was received.

...

Under Residential Tenancy Law you also are REQUIRED TO PAY US COMPENESATION for the remainder of the month of October which calculates to \$1161.36 equal to reimbursement of 24 days @\$48.39 per day. ...

...

Wish we could say it was a pleasure doing business.

The parties disagree as to which date possession of the rental unit transferred back to the landlords: the tenants submit that the transfer occurred on or before one o'clock in the afternoon on 7 October 2014 while the landlords submit that the transfer occurred on or after 8 October 2014.

The tenant DH testified that movers attended at the property on 6 October 2014. The tenant DH testified that tenants cleaned the rental unit and left the keys to the rental unit on the kitchen counter. The tenant DH testified that he left the backdoor unlocked. The tenant DH testified that he thought the rental unit would be safe because the next-door neighbours were police officers and the house had no contents. The tenant DH testified that he texted the landlords on the evening of 6 October 2014 or the morning of 7 October 2014 to inform them that the keys were on the counter.

The tenant DH testified that he returned to the rental unit on 7 October 2014 early in the day to retrieve some belongings from outside, including planters, a bag of dirt and a barbeque cover.

The tenant DH testified that the tenants elected not to participate in the condition move-out inspection.

The tenants provided me with a receipt from a moving company that indicates that the movers provided seven hours of services beginning at 1000 on 6 October 2014.

The tenants provided me with a letter from a witness. The witness writes that the tenants had completely moved from the rental unit on 6 October 2014. The witness writes that on 7 October 2014 the witness accompanied the tenants to retrieve some last minute outdoor items.

The landlord DW testified that neither he nor his spouse received a text from the tenants informing them that the keys had been left on the counter. The landlord DW testified that he went by the rental unit on 7 October 2014 at 1400 and noticed that the tenants' belongings were still in the kitchen and the garage. The landlord DW testified that at 1700 on 7 October 2014 he drove by the rental unit and saw the tenant DH and a friend in the rental unit. The landlord DW called his realtor. The realtor lives across the street from the rental unit. The landlord DW testified that the realtor went over and saw the two parties in the rental unit.

The landlord DW testified that he had given notice to the tenants that he would conduct a move-out inspection at 0900 on 8 October 2014. The landlord DW waited 45 minutes, but neither tenant attended. At that time the landlord DW checked and saw that there were still the tenants' belongings in the garage. The landlord DW testified that the tenants have still not returned all the keys associated with the rental unit.

The landlord DW submitted that the landlords accept that possession of the rental unit transferred back to the landlords by 8 October 2014 despite the tenants' lack of communication and failure to return all keys.

Analysis

Section 44 of the Act sets out that a tenancy can end, among other ways, pursuant to sections 49 or 50.

Section 49 of the Act allows a landlord to issue a 2 Month Notice.

Pursuant to subsection 51 a tenant is entitled to receive the equivalent of one month's rent in compensation:

- (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to subsection 51(1.1) a tenant may withhold the last month's rent:

- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Pursuant to section 50 a tenant may end a tenancy with ten days' notice where they receive a notice pursuant to section 49 of the Act:

- (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
 - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

I find that the tenants issued a valid ten-day notice pursuant to section 50 of the Act. As such, the tenants are entitled to a refund of any rent deemed paid pursuant to subsection 51(1.1) for a period after the effective date of the tenant's notice.

Pursuant to subsection 57(2) of the Act a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. An overholding tenant is a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit. Pursuant to paragraph 37(1)(b) of the Act, at the end of the tenancy a tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and give access to the residential property.

By the end of this tenancy, communications had broken down between the parties. I accept the landlords' evidence that the landlords did not receive a text message from the tenants indicating that they had left the rental unit and that the keys were on the kitchen counter. I find that the tenants had left belongings in the rental unit and the garage. I accept that the landlords were uncertain as to whether the tenants had relinquished possession of the rental unit. I find that the landlords acted prudently by not taking actual possession of the rental unit until they were certain the tenants' personal property had been abandoned.

I find that the landlords were entitled to compensation from the tenants for their use and occupancy when the tenants overheld the rental unit by one day by failing to return possession to the landlords; however, the tenants were also permitted withhold payment for the use of that day to the landlords pursuant to subsection 51(1.1) of the Act.

The tenants are entitled to compensation for 23 days of the 31 days of October, that is, \$1,112.90.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,162.90 under the following terms:

Item	Amount
Subsection 50(2) Compensation	\$1,112.90
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,162.90

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) 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 subsection 9.1(1) of the Act.

Dated: April 13, 2015

Residential Tenancy Branch

