



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, MNSD, FF

Introduction

In the first application, by filing number, the landlords seek to recover a sum equivalent to a month's rent that they say the tenants agreed to pay as compensation for breaching a fixed term tenancy.

In the second application the tenants seek to recover their \$550.00 security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the "Act").

The style of cause has been amended to reflect the lawful names of the parties.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either side is entitled to the relief claimed?

Background and Evidence

The rental unit is the three bedroom main floor of a house. The landlords rent a second suite below to others.

This tenancy started in July 2014. The parties signed a tenancy agreement for a fixed term ending June 30, 2015 at a monthly rent of \$1100.00. As indicate above, the landlords received a \$550.00 security deposit.

In early October the tenants wrote to the landlords stating that for personal reasons they wished to end the tenancy early, effective December 31, 2014 and referring to a verbal agreement with the landlords to do so.

By reply dated November 5, the landlords responded indicating agreement if the tenants paid the November and December rent.

The issue was ultimately resolved by a resolution proposed in writing by the tenants on November 6 and agreed to by the landlords. The written agreement to end the tenancy refers to "(1 year) RESIDENTIAL TENANCY AGREEMENT TERMINATION.' It was drafted by the tenants or one of them and signed by both landlords and both tenants. It is dated November 6, 2014, and provides that the tenants will move out on November 29, 2014 and the tenancy will end. By the agreement the tenant Mr. I.M.C. agreed to pay rent for the month of December with five post dated cheques of \$100.00 each to be "collected" on the 20th of each month starting January 20th, 2015 and with one final payment of \$150.00 that, when added to the tenants' security deposit would total \$1100.00; the amount of the December rent.

The tenants moved out November 29, 2014 and provided the landlords with the cheques required under the agreement to end the tenancy.

The landlord found new tenants and re-rented the premises effective December 1, 2014.

At the end of December the tenants received advice or information from the Residential Tenancy Branch that a landlord could not collect double rent and deposit money for the same month. The tenant Mr. M.C. wrote to the landlords relaying this information and that he was cancelling the cheques given pursuant to the agreement to end the tenancy. The note included the tenants' forwarding address.

The landlords attempted to negotiate the first of the tenants' \$100.00 cheques on or shortly after January 20th but the cheque was dishonoured by the tenants' financial institution. The landlords filed their application and the tenants filed theirs two days later.

Analysis

I have reviewed the November 6th agreement to end the fixed term tenancy and I find it reasonably clear in showing the parties intention to minimize their potential losses resulting from an early end to the tenancy.

I find that the \$1100.00 agreed to be paid under the agreement, though termed “rent” was not technically “rent.”

Rent is defined in the *Act* as “money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit”

The tenancy was ending November 29th and the tenants were giving up possession at that date. The \$1100.00 was not being paid so that the tenants could possess the rental unit for the month of December. There was no tenancy under which “rent” could be paid. Rather, I find that the intention of the parties was that the \$1100.00 was an amount equivalent to December rent, not rent itself.

Under the agreement the tenants were legally obliged to pay rent until the expiry of the fixed term at the end of June. Their commitment to do so is a fundamental aspect of a fixed term tenancy agreement. From a landlord’s perspective, to simply consent to an early end could result in the loss of steady rental income while a new tenant is sought.

In this case, it is fortunate for the landlords that they were able to find new tenants for December 1st. It seems to me that had they failed to find new tenants until, say February or March 2015, or found new tenants but at a lower rent, the agreement the parties signed would be a bar to the landlords applying to recover that lost rent from these tenants. These tenants could hold the November 6th agreement as a complete defence against such a claim.

The fact that the landlords may have received an amount equivalent to one month’s rent payment under the November 6th agreement and then proceeded to obtain additional rent moneys by re-renting so quickly after November 29th, is not grounds for setting aside the agreement that has been made.

The tenants don’t say they were forced or tricked into signing the November 6th agreement.

I find that the agreement of November 6th is a valid and binding agreement. The fact that circumstances have ultimately worked to the landlords' benefit is no more relevant than had the circumstances resulted in a loss to the landlords.

The landlords are entitled to recover the money promised under the agreement; the amount of \$1100.00. The agreement is a written authorization to retain the tenants' security deposit of \$550.00. The landlords are entitled to recover the balance of \$550.00 plus the \$50.00 filing fee.

Conclusion

The tenants' application to recover the security deposit is dismissed.

The landlords will have a monetary order of \$600.00. It will be against the tenant Mr. I.M.C. only as under the agreement that all the parties signed, only he is to pay.

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: April 16, 2015

Residential Tenancy Branch

