



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened to address a claim by the tenants for a monetary order. Both parties participated in the conference call hearing with the tenant BK representing both tenants. In this decision where I refer to the tenants in the singular form, it is BK to whom I refer.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on June 15, 2013 and rent was set at \$990.00 per month with rent payable in advance on the first day of each month. On October 17, the tenants emailed the landlord to advise that they had found a new place to live and ask if it was agreeable to end the tenancy on November 15. On the same date, the landlord responded to that email as follows:

So technically I can demand November be paid in full strictly on the fact that we're on a first of month cycle (despite tenancy starting on the 15th of June, 2013). I am willing to waive it if we get a clean break on the 15th as it will be easier for me to show the place without requiring I give you notice.

So on November 1st, you will need to pay me for the full months [sic] rent, and I will be glad to return to you the unused portion from the 15th to the end of November. Is that fair?

The tenant responded to this email by saying, "All of that other stuff sounds good."

In the October 17 email the landlord also asked that the tenants patch holes in the walls and paint the walls. The parties agreed that the tenants had damaged the walls somewhat and the tenant were agreeable to painting. The landlord advised the tenant in that email the brand, colour and texture of paint he required for the unit. In a later email, the tenant asked if he could use paint from the storage room, which the landlord approved.

On October 25, the landlord advised that he had found a new tenant who would take possession of the unit on December 1 and further stated that the tenants could “prorate if you want an extra couple days to move your stuff”, which both parties understood to mean that if the tenants did not surrender possession of the unit on November 15, they could pay per day for any extra days they occupied the rental unit.

The tenants moved all of their belongings out of the rental unit on November 15 and on November 16, began painting with paint he had purchased from a local store. The tenant began painting and realized that the colour was not the same as what was already on the walls. He texted the landlord and advised him of the problem and returned the paint to the store to learn that the paint colour was unavailable. The tenant purchased primer and returned to the unit to cover the incorrect paint. The next day, the tenant used leftover paint provided by the landlord and again discovered that it was the wrong colour. The tenant was unable to paint for the next 4 days as he had to work but returned to the unit on November 22 to finish painting. The tenants returned the keys to the landlord on November 23.

The tenants seek the return of the rent paid from November 16-30, asserting that they vacated the unit on November 15 as required and were simply painting beyond that point. They argued that after November 15 the landlord did not need to show the unit to prospective renters he had initially stated that he intended to do since he had already secured a new tenant by that point and stated that the time spent painting was long only because the landlord had provided them with incorrect information. They believe they could have completed painting by November 17 had the landlord told them the paint was a custom colour or found the correct leftover paint earlier.

The landlord argued that because the tenants did not give him notice until October 17, their notice cannot have been effective prior to November 30. Further, he argued that their notice was not legal as it was sent via email. He further argued that the *Residential Tenancy Act* (the “Act”) considers a tenancy to be over only when tenants have provided a forwarding address.

The tenants also seek to recover the \$50.00 filing fee paid to bring their application.

Analysis

The Act requires a tenant's notice to end tenancy to be in writing, but the Act does not define "writing". I find that email is the equivalent of writing and because the landlord acknowledged receipt of the email advising that they were ending their tenancy, I find that the landlord received the tenants' notice on October 17 and that it was effective to end the tenancy.

The landlord is correct that the Act states that for a month-to-month tenancy in which rent is payable on the first day of the month, notice must be given prior to the first of the month in order to take effect on the last day of the month. In other words, notice to end a tenancy given any time in October would end the tenancy on November 30.

While the Act requires tenants to provide a forwarding address before the landlord is obligated to deal with the return of their security deposit, there is nothing in the Act which states that a tenancy does not end until a tenant provides a forwarding address.

Section 44 of the Act permits parties to mutually agree in writing to end the tenancy. I find that the landlord agreed to end the tenancy on November 15 as is evidenced by the October 17 email reproduced in part above. The landlord made this conditional on a "clean break", which he interpreted as meaning that the keys had to be returned and all repairs completed while the tenants interpreted this as meaning that their belongings had to be removed. I find that the reference to a "clean break" makes the most sense as both parties at that point walking away with no further obligations to each other. It does not make sense to identify a clean break as a situation in which parties continue to have interaction in a tenancy relationship after the break occurs.

Ordinarily, I would find that the tenants had failed to make a "clean break" on November 15 and find that the landlord was entitled to a full month's rent. However, the landlord's October 25 made the tenants an offer to prorate rent for any days after November 15. The tenants accepted that offer in an email on November 23 and I find that the landlord cannot now withdraw the offer as it has been accepted.

I find that the tenants are only responsible to pay a per diem rate for the days after November 15 in which they maintained possession of the unit by retaining the keys and enjoying unfettered access to the unit. The question before me now is whether the tenants should be charged for the period from November 16-23 or for a shorter period.

The landlord directed the tenants to use a paint that was only available through a custom order, which meant they would need to provide to the supplier the formula for

the colour mix. It is clear that his intention was not to obstruct the tenants in any way; rather, he simply forgot that the paint had been custom ordered originally and appears to have forgotten that he had leftover paint which could have been used. But regardless of the fact that this oversight was unintentional, I find it more likely than not that the painting would have been completed by November 17 if the tenants had been given the correct information about the paint. I find that it would be unreasonable and unfair to force the tenants to bear the financial burden resulting from the landlord's misinformation and I therefore find that the tenants should only be held responsible for 2 days of rent, November 16 and 17.

The tenants paid the landlord a total of \$990.00 for the month of November which represents \$33.00 per day. I find that the tenants are entitled to a return of \$429.00 which represents the last 13 days of November. AS the tenants have been substantially successful in their claim, I find they should also recover the \$50.00 filing fee for a total award of \$479.00.

I grant the tenants a monetary order under section 67 for \$479.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$479.00.

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: June 11, 2015

Residential Tenancy Branch

