



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 an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants attended the teleconference hearing and gave affirmed testimony. During the hearing the tenants were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on June 28, 2015 and was successfully delivered to the landlord on June 30, 2015. The tenants’ testimony is supported by the online registered mail tracking website. The landlord’s address matches the address provided by the landlord on the condition inspection report. Based on the above, I find the landlord was sufficiently served with the Notice of Hearing, Application and documentary evidence on June 30, 2015, the day the registered mail package was signed for and accepted.

Issues to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- Are the tenants entitled the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

The tenants submitted a copy of the tenancy agreement in evidence. A one year fixed term tenancy began on August 1, 2010 and reverted to a month to month tenancy after August 1, 2011. Monthly rent was originally \$860 per month and due on the first day of each month. The tenants stated that the rent was increased during the tenancy to the most recent amount of \$973.43 as of the end of the tenancy. The tenants stated that they surrendered their \$430 security deposit at the end of the tenancy to the landlord to compensate the landlord for suite cleaning and carpet shampooing.

The tenants clarified during the hearing that although they applied for \$2,078.43, they are actually claiming less, \$1,043.43 which is comprised of what the tenants allege was a \$973.43 overpayment of June 2015 rent, plus a fee of \$20 they paid to the bank to stop the payment of the July 2015 rent payment, and for the recovery of the \$50 filing fee. I find that a reduction of the tenants' claim does not prejudice the landlord and is permitted pursuant to section 64(3) of the *Act* as a result.

The tenants confirmed under oath that they sent their notice to end the tenancy by text to the landlord agent on April 28, 2015 that they would be vacating the rental unit on June 1, 2015, but failed to submit any copies of the texts they referred to in evidence to support their claim. The tenants also confirmed that they did not submit any documentary evidence to support that the landlord agent responded to their texts to confirm the texts had been received by the landlord.

The tenants claim that they should not have been charged by the landlord for June 2015 rent and are requesting to be reimbursed the June 2015 rent, plus the fee they paid the bank to stop the July 2015 payment.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

In the matter before me, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable under the *Act* to minimize the damage or losses that were incurred.

Section 45(1) of the *Act* applies and states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[my emphasis added]

The tenants testified that they provided their notice to end tenancy by text which has no service provisions for texting under the *Act*. As a result, without evidence before me to support that the landlord responded to the text, I find the tenants have failed to prove that they served the landlord with their notice to end tenancy. Furthermore, the tenancy could not end on June 1, 2015, as rent was due on the first day of each month. In other words, the tenants would have had to prove that they served their written notice to end the tenancy on the landlord by April 30, 2015 indicating that they were vacating the rental unit by May 31, 2015 to avoid rent for June 2015 being due. In the matter before me, the tenants testified that they texted the landlord that they were vacating the rental unit on June 1, 2015.

As a result of the above, I find the tenants have failed to prove that the landlord breached the *Act*, regulation or tenancy agreement as they have not sufficiently proven

that they served the landlord with the required notice to end a month to month tenancy in accordance with section 45 of the *Act* and in accordance with the service provisions of section 88 of the *Act* which provide for the following ways to serve documents:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

In addition to the above, section 26 of the *Act* requires that tenants pay rent when it is due in accordance with the tenancy agreement. Given the above, I dismiss the tenants' application in full due to insufficient evidence that they served the landlord with their notice to end the tenancy. As the tenants' application did not have merit, I do not grant the tenants the recovery of the cost of the filing fee.

The tenants are reminded to serve documents in accordance with section 88 of the *Act* when serving a notice to end tenancy in the future.

Conclusion

The tenant's application is dismissed without leave to reapply due to insufficient evidence.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 14, 2015

Residential Tenancy Branch

