



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD, RR, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenants stated that the landlord was served with the notice of hearing package on September 17, 2015 by Canada Post Registered Mail and has provided a copy of the Canada Post Customer Receipt Tracking number as confirmation. The landlord confirmed in his direct testimony that he received the tenants' notice of hearing package. I accept the undisputed affirmed testimony of both parties and find that the tenants properly served the landlord with the notice of hearing package by Canada Post Registered Mail on September 17, 2015 as per section 88 of the Act.

The tenants stated that the landlord was served with their submitted documentary evidence on February 20, 2016 by Canada Post Registered Mail. The landlord confirmed receipt of the tenants documentary evidence in this manner.

The landlord stated that the tenants were served with his submitted documentary evidence on March 7, 2016 by Canada Post Registered Mail and has provided his Customer Receipt Tracking number in his direct testimony as proof of service. The tenants stated that as of the date of this hearing no documentary evidence has been received by the tenants from the landlord. I find that the landlord has failed to provide his documentary evidence in response to the tenants' claims within the allowed timeframe. The landlord's documentary evidence is excluded. The landlord was provided an opportunity to verbally relay his evidence as it is clear

based upon the landlord's submission that the documentary evidence was merely copies of the tenants' documentary evidence with written notations by the landlord.

The tenants stated that their selection for a reduction in rent for repairs, services or facilities was a clerical error and wished to withdraw that portion of the application. As such, no further action is required for this portion of the claim.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss, for return of the security deposit and recovery of the filing fee?

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 applicant's claim and my findings are set out below.

Both parties confirmed that there was no signed tenancy agreement, but stated that an agreement was made as per item #1 of the tenants documentary evidence dated November 3, 2014. It states,

\$1250 deposit for rental of top two floors 4 bdrm house at ...starting December 01, 2014.
(The document is acknowledged as being signed by both the landlord and the tenant).

Both parties confirmed in their direct testimony that an agreement was made on November 3, 2014 to start a tenancy on December 1, 2014 for \$1,250.00 per month.

The landlord stated that he accepted a \$1,250.00 deposit to secure the rental premises. The tenants disputed this stating that the \$1,250.00 was for a security and pet damage deposits.

The tenants stated that they "tried to back out" of the agreement on November 4, 2014 in a verbal discussion with the landlord who refused. The landlord disputed this claim. The tenants stated that they provided verbal notice to end the tenancy sometime between November 7 and 10. The landlord disputed this stating that he received a notice to end the tenancy in writing dated November 19, 2014 on November 30, 2015. The tenants stated that as a result of discussions a disagreement resulted in the tenants to no longer rent the rental premises. Both parties agreed that the tenants never moved into the rental premises.

Analysis

Section 15 of the Act states,

Application and processing fees prohibited

- 15 A landlord must not charge a person anything for
- (a) accepting an application for a tenancy,
 - (b) processing the application,
 - (c) investigating the applicant's suitability as a tenant, or
 - (d) accepting the person as a tenant.

The landlord provided undisputed affirmed evidence by stating,

he accepted a \$1,250.00 deposit to secure the rental premises.

As such, I find that the tenants' payment of \$1,250.00 to the landlord constituted an overpayment of a \$625.00 security deposit as monthly rent was agreed upon at \$1,250.00 per month.

Section 45 of the Residential Tenancy Act 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.

The tenants have provided affirmed testimony that no written notice to end the tenancy was given to the landlord, but that numerous verbal notice(s) were given to the landlord. The landlord has disputed these claims and has stated that up to November 30, 2014 the landlord was under the impression that the tenancy would begin on December 1, 2014. However, the landlord has confirmed receiving the tenants' notice to end tenancy on November 30, 2014 in the form of a letter dated November 19, 2014. Both parties confirmed that the tenancy was to begin on December 1, 2014.

I find in the absence of any other supporting evidence from the tenants that the landlord received written notice to end the tenancy on November 30, 2014 as per his direct testimony. Section 45 of the Act states that a tenant may end a periodic tenancy (month-to-month) on an effective date that is not earlier than one month after the landlord receives the notice. In this case the landlord received the written notice on November 30, 2014 to end the tenancy on December 31, 2014.

The tenancy is at an end as of December 31, 2015, I find that the tenants are entitled to the return of their \$625.00 security deposit and the \$625.00 overpayment.

As the tenants have been successful in their application, I order the tenants recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenants favor in the amount of \$1,300.00.

This order must be served upon the landlord. Should the landlord fail to comply, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 23, 2016

Residential Tenancy Branch

