



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 compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing. The landlord DM attended the hearing on behalf of both landlords. Both 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 tenant CM (the tenant) provided all testimony on behalf of the tenants.

Neither party raised any issues with service of the dispute resolution package or evidence.

The tenants seek a monetary order for compensation pursuant to subsection 51(1) of the Act.

Preliminary Issue – Evidence

The tenants asked to submit a copy of the notice they delivered pursuant to subsection 50(1) of the Act. The landlords did not consent to the tenant relying on this evidence and disputed that any such notice existed.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. Had the landlords known that the tenants sought to rely on this evidence, the landlords may have elected to examine the notice for authenticity. This is especially important as the landlords dispute that this notice even existed. For these reasons, I decline to exercise my discretion to admit this evidence as it would be unduly prejudicial to the landlords and the tenants had ample opportunity to submit their evidence prior to this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? 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 testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began in August 2014. Monthly rent in the amount of \$1,300.00 was due on the first. The landlords have returned the tenants' security deposit.

On or about 1 October 2015 the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) to the tenants. The 2 Month Notice set out an effective date of 1 December 2015. The 2 Month Notice set out that it was given as the "the rental unit will be occupied by the landlord or the landlord's close family member".

The tenant testified that on or about 20 October 2015, the tenants delivered a notice to end tenancy effective 31 October 2015 (the Tenants' Notice). The tenant testified that the Tenants' Notice was delivered to the son of KM and the brother of DM.

The landlord testified that neither landlord received the Tenants' Notice. The landlord testified that the tenants returned the keys to the rental unit to the landlords on or about 9 November 2015.

Analysis

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*].

The tenants say that they delivered a notice pursuant to section 50 of the Act. The landlords deny receiving the Tenants' Notice. The tenants did not produce a copy of the Tenants' Notice. On balance, I find that the tenants did not issue a valid ten-day notice pursuant to section 50 of the Act and did not effectively end the tenancy early. As such the tenants were responsible for rent due 1 November 2015.

In accordance with subsection 51(1.1) of the Act the tenants were entitled to withhold rent due 1 November 2015 in lieu of compensation due pursuant to subsection 51(1) of the Act. As the tenants received their compensation by way of the withheld rent on 1 November 2015, the tenants are not entitled to receive further compensation. The tenants' claim for compensation pursuant to subsection 51(1) of the Act is dismissed without leave to reapply.

As the tenants have not been successful in this application, they are not entitled to recover the filing fee paid from the landlords.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: July 29, 2016

Residential Tenancy Branch

