



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was held by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") filed on August 17, 2016 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation, or tenancy agreement. The Landlord also applied to recover the filing fee from the Tenants.

The Landlord and Tenants appeared for the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's Application and the Landlord's 55 pages of documentary evidence. The Tenants confirmed that they had not provided any documentary evidence prior to this hearing.

The hearing process was explained and the parties confirmed their understanding of the proceeding instructions. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the issues to be decided in this matter.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for monetary losses under the tenancy agreement?

Background and Evidence

The parties agreed that this tenancy started on September 1, 2014 for a fixed term of 12 months. After this time, the parties engaged into another written tenancy agreement for another 12 months due to expire on August 31, 2016. Rent was payable by the Tenants for \$1,400.00 on the first day of each month. The Tenants paid a security deposit of \$700.00 at the start of the tenancy.

The Tenants were responsible for putting the power into their name and for paying for this utility under the tenancy agreement. The tenancy ended when the Tenants were issued with a notice to end tenancy in January 2016 for the Landlord's use of the property and the Tenants vacated the rental unit on August 31, 2016.

The Landlord testified that he wanted to keep the analog power meter attached to the rental property for health reasons but was advised by the utility company that he would have to pay a \$34.10 monthly fee/charge if he wanted to keep it. The Landlord paid this monthly charge when he occupied the property.

As a result, when he entered into the tenancy with the Tenants, the parties agreed under clause 8 of the tenancy agreement that the Landlord would reimburse the Tenants the amount charged to them for retaining the analogue meter on their monthly utility bill. The Landlord stated that the Tenants should not be held liable for this.

The Landlord testified and provided into evidence monthly payments of \$34.10 he made to the Tenants during the tenancy totalling \$682.00 which he now seeks to recover back from the Tenants. The reasons for this is because after the tenancy had finished, the Landlord found out from the utility company that the Tenants were not being charged any fee for retaining the analogue power meter. The Landlord explained that at no time did the Tenants inform him that they were not paying the \$34.10 fee and readily accepted the payments for this amount being made to them during the tenancy by e-transfer.

The Tenants did not dispute the Landlord paid them \$682.00 for these charges. However, they were unaware during the tenancy that they were not being charged the fee by the utility company, which they now accept was owed to the Landlord.

However, the Tenants submitted that when they discussed with the Landlord by email about paying this amount back to him, they requested a reduced amount be paid in three payments to reflect some work they had done for the Landlord during the tenancy. The Tenants referred me to the Landlord's evidence which detailed the email exchange regarding the payment plan.

The Tenants stated that in that email exchange the parties were unable to come to agreement on the date that the payments were to be made. Therefore, no agreement was able to be reached. However, the Tenants insisted that the reduced payment the Landlord had agreed to in the form of three payments should be the amount that should be returned to the Landlord and not the amount the Landlord was seeking.

The Landlord disputed this and disagreed on any deductions to be made to the amount owed back to him. The Landlord explained that in the same e-mail exchange being referenced by the Tenants, the reduced payment was contingent upon the Tenants agreeing to make the three payments on set dates. The Landlord submitted that as the Tenants were unable to meet the timing of the first payment, the offer of the reduced amount was off the table. As a result, the Landlord rescinded the offer in the follow up e-mails.

The Landlord stated that the Tenants left him no option but to file the Application because the Tenants were unable to commit to an agreement to making the reduced partial payments on time.

Analysis

In this case, I am satisfied by the evidence before me that the Tenants owe the Landlord \$682.00 for the monies he had paid to the Tenants for analog meter fees that were not incurred or paid by the Tenants.

The Tenants argued that the amount owing to the Landlord should be reduced to the original amount the Landlord had agreed to, which the Landlord disputed. I have examined the email evidence before me and in this respect, I reject this submission. This is because while the parties were attempting to come to an agreement by email on the exact amount to be returned to the Landlord for the payments the Landlord had made, I find no actual agreement or meeting of the minds took place. This was the very reason why the parties now appear for this hearing.

I find the Landlord's agreement to the reduced amount hinged and was dependent on the Tenant's agreement and commitment to make timely payments of the monies owed. As the Tenants were unable to commit to this commitment, quite rightly they should not have if they were unable to make the first payment on time, I find this led to the collapse of the agreement and no agreement was entered into. Accordingly, I find the Tenants owe the full amount of the monies back to the Landlord.

As the Landlord had no other option but to file this dispute to seek recompense, I also grant the \$100.00 filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$782.00. The Landlord is issued with a Monetary Order for this amount. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of this order are attached to the Landlord's copy of this Decision.

At the conclusion of the hearing, both parties provided evidence and submissions with respect to the return of the Tenants' security deposit and how this was dealt with in this tenancy. However, the parties were unable to reach mutual resolution in this respect.

As this matter was not before me for determination by legal finding, I pointed the parties to remedy by making an Application. However, I cautioned both parties on the strict provisions and deadlines of the Act in dealing with the return of a security deposit in tenancies. Both parties should ensure they apprise themselves of the requirements and consequences with respect to this issue before moving forward with dispute resolution.

Conclusion

The Tenants owe the Landlord for monies paid to them incorrectly during this tenancy. The Landlord is granted a Monetary Order for the loss and recovery of the filing fee in the amount of \$782.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 20, 2017

Residential Tenancy Branch

