



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, O, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- 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 requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant, J.M. (the tenants) stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on January 30, 2017 which was confirmed by the landlord. The tenants also filed an amended monetary claim increasing the claim to \$7,030.11 on February 8, 2017 which was served to the landlord via Canada Post Registered Mail on February 21, 2017. The landlord also confirmed receipt of the amended application. The tenants stated that the landlord was served with the submitted documentary evidence via Canada Post Registered Mail on February 2, 2017 which was confirmed by the landlord. The landlord served the tenants with their submitted documentary evidence via Canada Post Registered Mail on January 24, 2017 which was confirmed by the tenants. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

The tenant clarified that she had vacated the rental unit on February 18, 2017 after giving notice to the landlord via the landlord's counsel that they would comply with the 1 Month Notice dated January 24, 2017 by vacating the rental unit by February 28, 2017. The landlord stated that she was not aware of the tenant vacating the rental unit and could not confirm nor deny it. The tenant has withdrawn her application to cancel the 1 Month Notice. As such, no further action is required for this portion of the tenants' application.

It was also clarified with both parties that as the tenancy was at an end that the tenants' request for an order for the landlord to comply with the Act, regulations or tenancy agreement would no longer be applicable and is considered withdrawn by the tenants as well.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss, 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.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on August 31, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$2,500.00 payable on the 1st day of each month and a security deposit of \$1,250.00 was paid on September 1, 2016.

Both parties confirmed that the landlord served to the tenant a 1 Month Notice to End Tenancy for Cause dated January 24, 2017 on January 24, 2017 via Canada Post Registered Mail.

The tenants seek a monetary claim of \$7,030.11 which consists of:

\$2,500.00	Return of January 2017 Rent
\$2,500.00	Return of February 2017 Rent

\$1,250.00	Return of Security Deposit
\$1,000.00	Compensation for Moving Expenses

The tenants stated that the landlord failed to properly screen incoming new tenants for her lower suite which caused the tenants to vacate the rental unit prematurely. The tenants stated that numerous issues occurred with the lower suite tenants which the landlord failed to act reasonably in resolving. The tenants stated that the landlord refused to accept her numerous complaints via text message regarding the harassment, hostility, abuse and aggression that was received from the lower suite tenants. The tenants stated that the landlord provided a written letter on January 11, 2017 requesting that all future complaints be mailed to the landlord's home address. The tenants stated that they wished to cancel the notice to end tenancy, but also wished to no longer stay at the rental premises as they feel unsafe, abused and weary.

During the hearing the tenants clarified that they had notified the landlord that they were vacating the rental unit by February 28, 2017 and had in fact moved out on February 18, 2017. The landlord stated that she was unaware of the tenants vacating the rental unit on February 18, 2017 as the written notice received stated that they would be vacating by February 28, 2017.

The landlord provided affirmed testimony that a mediation meeting was arranged by the landlord for the tenants and the lower suite tenants to discuss the issues over the tenancies. The tenant confirmed that the landlord had facilitated a mediation meeting on January 11, 2017. Both parties agreed that no resolution was reached after all parties left the meeting. The landlord stated throughout this process the lower suite tenants were served with numerous warning letters which eventually resulted in a 1 Month Notice to End Tenancy being served upon them. The landlord stated that the end result was that the lower suite tenants had vacated the rental unit on January 28, 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that as the tenants had voluntarily vacated the rental unit in response to the landlord's 1 Month Notice on February 18, 2017 that the landlord is not responsible for the moving costs of the tenants. As such, this portion of the tenants claim is dismissed.

As for the tenants claim for return of the January and February 2016 rent of \$2,500.00 per month, I find that the tenants have failed to establish a claim. The tenants confirmed that they had occupied the rental unit during January 2017 and up to the date that they had vacated on February 18, 2017. The tenants did not provide any evidence that they had suffered a loss of use of the rental premises during that period. The tenants have claimed that the landlord acted unreasonably by failing to properly screen potential incoming tenants by requiring a criminal record check and to diligently check their references. I find that the requirements of obtaining a criminal record check and extensive personal reference checking is not a reasonable duty that the landlord must attain. As such, the tenants monetary claim for return of January and February rent is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case, the tenants have not formally provided their forwarding address in writing to the landlord for the return of the security deposit to the tenants. As of the date of this hearing neither has the landlord arranged a date for the condition inspection report for the move-out to be completed by both parties. As such, I decline to make any orders regarding the return of the security deposit as it is pre-mature at this time. This portion of the tenants' application is dismissed with leave to reapply.

Conclusion

The tenants' monetary claim for return of rent and moving expenses are dismissed without leave to reapply.

The tenants' monetary claim for return of the security deposit is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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 01, 2017

Residential Tenancy Branch

