



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 9, 2016. The landlord stated that an online search of the Canada Post Website shows that the tenants signed in receipt of the packages on December 20, 2016. The tenants did not submit any documentary evidence and confirmed receipt of the landlord's notice of hearing and documentary evidence package. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

At the hearing both parties were given an oral judgement in which they were told pursuant to section 16 of the Act that the obligations of a tenancy agreement start on the date the agreement is entered into and that both parties had not signed the agreement and as such the landlord's application was dismissed.

Section 16 of the Act state that the rights and obligations of the landlord and tenant under a tenancy agreement takes effect from the date the tenancy agreement is entered into, whether or not the tenant occupies the rental unit.

Upon review of Section 1 of the Act, Definitions a “tenancy agreement” and the undisputed affirmed testimony of both parties, I have reversed my decision.

Section 1, Definition of a “tenancy agreement” states,

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

I find that an oral offer was made by the landlord detailing the terms of the tenancy to the tenants. This is confirmed in the direct testimony of both tenants who confirmed that the tenancy was to begin on November 21, 2016 paying a monthly rent of \$1,200.00 payable on the 1st day of each month. This was followed up with a written form “Residential Tenancy Agreement” and given by the landlord to the tenants to sign. This was confirmed by the tenants in their direct testimony. I find that the tenants had made an implied oral agreement upon coming to terms with the landlord by providing to the landlord a \$600.00 security deposit as an agreement to those terms. As such, I find that a tenancy began on October 27, 2016 when the tenants gave the landlord the security deposit and the hearing shall proceed on the landlord’s application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain the security deposit?

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 agreed that a security deposit of \$600.00 was paid on October 27, 2016 to the landlord with the intent to occupy the rental unit as a tenant beginning November 21, 2016. The agreement was a monthly rent of \$1,200.00 on a month-to-month basis. Both parties confirmed that a tenancy agreement was completed by the landlord and

given to the tenant to sign, but that the tenants failed to return a signed copy. Both parties confirmed that the tenants gave notice on November 21, 2016 of their intent not to occupy the rental premises on November 21, 2016.

The landlord seeks an amended monetary claim of \$1,200.00 for the loss of rental income for December 2016 as the tenants failed to give proper 1 Month Notice to end the tenancy.

The tenants argued that they did not sign the offered tenancy agreement and that the offer was not accepted.

The landlord argued that even though the tenancy agreement was not signed, the tenancy began after the tenants accepted the terms of the tenancy agreement and provided a \$600.00 security deposit to the landlord on October 27, 2017. The landlord further argued that the tenants did not notify the landlord of their intent to not occupy the rental unit until the beginning of the tenancy on November 21, 2017. The landlord provided testimony that efforts were made to advertise and re-rent the rental unit, but were unsuccessful because of the short time period.

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 the landlord has established a claim for unpaid rent of \$1,200.00. Both parties have confirmed that the tenants failed to provide 1 Months' Notice to end the tenancy by providing notice of their intent to not occupy the rental property on November 21, 2016 which was the start date of the tenancy.

The landlord has established a claim for \$1,200.00 for unpaid rent. I authorize the landlord to retain the \$600.00 security deposit in partial satisfaction of this claim.

The landlord having been successful in the application for dispute is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$700.00.

The landlord may retain the \$600.00 security deposit.

The order must be served upon the tenants. Should the tenants fail to comply with the order, 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: June 16, 2017

Residential Tenancy Branch