



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Bros. Holdings. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents of the landlord.

The landlord testified the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 6, 2017 in accordance with Section 89. The landlord testified that the registered mail was returned to the landlord as unclaimed.

The landlord also testified that the registered mail was sent to the forwarding address provided by the tenants on December 10, 2016 prior to the tenants vacating the rental unit on December 20, 2016.

Documents sent by registered mail are deemed served five days after mailing pursuant to Section 90 of the *Act*. I therefore find that the tenants were served with the landlords' application, notice of hearing and evidence on January 11, 2017. I find refusal or neglect to accept the registered mail packages is a deliberate attempt to avoid service and does not constitute grounds for an application for review consideration under the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the tenancy began on April 1, 2014 as a month to month tenancy for a current monthly rent of \$990.00 due on the 1st of each month with a security deposit of \$495.00 paid.

The landlord submitted that the tenants gave verbal notice on November 4, 2016 of their intention to vacate the rental unit at the end of November 2016 but and then failed to move out of the rental unit until December 20, 2016 but did not pay rent for the month of December 2016.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the tenants had identified the landlord was in breach of a material term of a tenancy agreement that was not corrected within a reasonable time I find the tenants could only end the tenancy by issuing the landlord a notice of their intention to end the tenancy that complied with the requirements set forth in Section 45(1).

As such, for a notice issued by the tenants on November 4, 2016, I find the earliest day it could be effective would be December 31, 2017. Further, as per the landlord's undisputed testimony, I find the tenants retained possession of the rental unit for at least 20 days in the month of December 2016.

As a result, I find the tenants are obligated to pay rent for the month of December 2016.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,090.00** comprised of \$990.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$495.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$595.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 22, 2017

Residential Tenancy Branch