



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 landlords' application filed April 13, 2017 under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent, authorization to retain the tenants' security deposit, and recovery of the application filing fee.

Both of the tenants and one of the landlords attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to refer to documentary evidence.

Service of the landlords' application, notice of hearing, and evidence was acknowledged. The tenants had not filed any evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain the security deposit?

Are the landlords entitled to recover the filing fee?

Background and Evidence

The written tenancy agreement was not in evidence. However, the parties agreed that this tenancy began September 4, 2016 for a fixed term expiring May 31, 2017. It was further agreed that rent was \$1,000.00 monthly, inclusive of utilities, and due on the first of the month. A security deposit of \$500.00 was paid at the start of the tenancy and remains with the landlords.

It was also agreed that the parties spoke in December, 2016, after the landlords raised a concern with the cost of utilities. At that point the parties agreed orally that it would be best if the tenants were to locate other housing as soon as they could. Nothing was documented in writing at this time.

The tenants emailed the landlords on March 25, 2017 to tell them that they would be leaving effective April 1, 2017. A copy of this email was included in the landlords' evidence.

The parties met on April 1, 2017, and signed a Mutual Agreement to End Tenancy, effective at 1:00 pm on April 1, 2017. A copy of the Mutual Agreement was in evidence. It states that the tenants agree to vacate by 1:00 pm on April 1, 2017, and then states: "The parties recognize that the tenancy agreement between them will legally terminate and come to an end at this time."

The tenants testified that there was no condition inspection report at move-in or at move-out. The landlords did not disagree with this.

The tenants suggested that the oral agreement in December and the written Mutual Agreement signed on April 1, 2017 meant that they were not liable for April's rent.

The landlord stated that there was no agreement to waive the landlord's entitlement to one month's notice at the meeting in December or in the Mutual Agreement, and that he had asked the tenants to sign the Mutual Agreement because he was required to do so.

In the details section of their application the landlords state that the unit was unclean and some fixtures were broken when the tenants vacated. Although the landlords' materials included written submissions on the condition of the rental unit, the landlords did not include any documentary evidence as to the state of the unit or the costs associated with cleaning and repairing the unit.

Analysis

The landlords and the tenants agreed that the tenants were not required to wait until the end of the term (until May 31, 2107) to end the tenancy. However, the parties disagreed on how much notice the tenants were required to give in order to end the tenancy.

Under most circumstances, the tenants would be required to give at least one month's notice, effective on the day before rent is due. This notice requirement is set out in s. 45 of the Act.

At the hearing there was a substantial amount of discussion about the legal effect of the Mutual Agreement. The landlord did not believe that the tenants could leave without at least one month's notice to end the tenancy.

Although this made sense initially based upon the standard notice requirements set out in s. 45 of the Act, upon closer scrutiny, I have noted that the Mutual Agreement specifically states that the tenancy is legally ended on April 1, 2017.

Section 44 of the Act sets out the different ways a tenancy may end. Section 44(1)(a)(i) provides that a tenancy may end if the tenant gives at least one month's notice on the day before rent is due.

Section 44(1)(c) provides that a tenancy may end when the landlord and tenant agree in writing to end the tenancy.

Here, the tenants gave notice, which would have ended the tenancy on April 31, 2017.

However, by signing the Mutual Agreement, the parties agreed to end the tenancy earlier, on April 1, 2017. As a result, the tenants were not obligated to pay rent after April 1.

If the landlords had not signed the Mutual Agreement, they could have claimed for April's rent. However, by agreeing to end the tenancy on April 1, rather than April 31 (which would have been the effective date of the tenants' notice given March 25 as per s. 45 of the Act), the landlords waived their entitlement to April's rent, with the exception of their entitlement to rent for April 1.

Most of the hearing was occupied with the question of whether the tenants owed rent for April. The landlords addressed the condition of the unit in their written submissions, but did not include any evidence of the costs associated with cleaning or repair. As they have not quantified or particularized this portion of their claim I cannot grant a monetary award.

The landlords have also extinguished their right to claim against the security deposit for damage to the rental unit by failing to do condition inspection reports at the beginning and end of the tenancy, as set out in sections 24(2) and 36(2) of the Act.

Based on the Mutual Agreement, the tenants owe the landlords rent for April 1 only. On a prorated basis this amounts to \$33.00.

As the landlords' application is partially successful, they are entitled to recover half of the application filing fee (\$50.00).

In accordance with sections 38 and 72 of the Act, I allow the landlords to retain \$83.00 of the tenants' security deposit in partial satisfaction of this amount.

In accordance with Residential Policy Branch Policy Guideline # 17, I order the landlords to pay the tenants the balance of their security deposit in the amount of \$417.00.

Conclusion

The landlords' application is allowed to the extent that they are entitled to retain \$33.00 of the security deposit.

I authorize the landlords to recover half of the application filing fee (\$50.00).

The landlords are required to return the balance of the deposit to the tenants, and I issue a monetary order for \$417.00 for the tenants. The landlords must be served with this order as soon as possible. Should the landlords fail to comply with this order, it 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 s. 9.1(1) of the Act and is final and binding under s.77, unless otherwise indicated in the Act.

Dated: September 27, 2017

Residential Tenancy Branch