



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O, FF

Introduction

The landlords apply for an order of possession. Since this application was brought in September, the tenants vacated the rental unit at the end of October and the landlords have regained possession. By amendment the landlords also seek a monetary award for November rent and for the cost of cleaning and repair. As well, each has brought their own application for dispute resolution; the landlords for recover of November rent of \$2550.00 and the tenants for recovery of the \$1275.00 security deposit and \$625.00 pet damage deposit (related file numbers shown on cover page of this decision). The hearing of the two applications is set for June 2018.

The parties agreed that this hearing would resolve the questions of whether or not the landlords are entitled to November rent (waiving their other claimse) and whether the tenants are entitled to the return of their deposit money, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

When did this tenancy end? Have the landlords failed to comply with s.38 of the *Act*?

Background and Evidence

The rental unit is a four bedroom home. There is a written tenancy agreement showing that the tenancy started December 1, 2016 for fixed term ending November 30, 2017.

The agreement requires that the tenants vacate the rental unit at the end of the fixed term unless another agreement was entered into.

The monthly rent was \$2550.00. The landlords continue to hold a \$1275.00 security deposit and a \$625.00 pet damage deposit.

In August the landlords indicated a willingness to enter into another tenancy agreement but at a significantly increased rent. Instead, the tenants declined and began looking for a new place to live. In mid September there was a disagreement about whether or not the tenants could end the tenancy early. By an email dated September 11, the tenant Ms. F.Z. wrote to indicate that the tenants could simply give a 30 day notice and the landlords would be required to find a new tenant, which wouldn't be hard "in today's market." She said that the tenants would give the landlords their notice if they found a new place before November 30. The landlord Mr. H. wrote asking the tenants to let the landlords know when they had found a new place and offering a reference.

The tenants did find a new place to live, however they were required to start their new tenancy on November 1, 2017, one month before the expiry of this tenancy.

Later in September they emailed the landlords that they would be leaving October 31 and provided their forwarding address in writing for return of their deposit money.

Again, by a handwritten letter dated October 26 the tenants wrote to say they were leaving October 31, providing a forwarding address and requested return of their deposit money within fifteen days after.

A move out inspection for October 31 was raised but it did not take place. The tenants arranged for return of the keys to the landlords on October 31.

On or about November 2 the landlords issued a ten day Notice to End Tenancy for unpaid November rent.

Analysis

The purpose of a fixed term tenancy is to assure both a landlord and the tenant that they have a secure, guaranteed length of tenancy. A landlord may not end a fixed term tenancy for his own reasons during that term and equally, a tenant is responsible to pay the rent for the entire term. A tenant who attempts to end the tenancy early is said to be repudiating the tenancy. It is a fundamental breach of the tenancy agreement.

A landlord faced with a tenant's repudiation may accept the repudiation, ending the tenancy, and may sue the tenant for loss of rent for the remainder of the term. In such case the landlord is obliged to attempt to "mitigate" or reduce his or her damages by attempting to re-rent the premises.

A landlord may decline to accept the repudiation of the tenancy and may sue the tenant for each month's rent as it comes due or may, on notice, sublet the premises on the tenant's behalf for the remainder of the term (see generally; *Highway Properties Ltd. v. Kelly, Douglas and Co. Ltd.*, [1971] SCR 562, 1971 CanLII 123 (SCC)).

Though the *Act* does not set out the law to be applied in the event of repudiation, Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent" speaks to the question, however the guideline states, "these principles apply to ... cases where the landlord has elected to end the tenancy" and so not to cases where the landlord does not accept a repudiation and considers the tenancy to be continuing.

In this case the tenants have not proved on a balance of probabilities that the landlords accepted the repudiation of this tenancy. The tenants "gave notice" that they were leaving but in my view the landlord Mr. H.'s text response of September 11 is consistent with the landlords' position that they meant to offer a reference for when the tenants find a place after November 30.

The landlords were entitled to decline or ignore the tenants' repudiation and to demand rent for November. They are owed \$2550.00 for that rent.

The tenants are entitled to credit for the \$1900.00 of deposit money the landlords' hold.

They are not entitled to a doubling of that amount. The doubling provision in s.38 of the *Act* is intended to penalize a landlord who fails to either repay the deposit or make an application against it within 15 days after the end of the tenancy and after receiving the tenant's forwarding address in writing.

I find that this tenancy ended November 30. The landlords' application was brought and the amendment for a monetary claim was made before that date. Section 38 has no application.

Conclusion

The landlords are entitled to a monetary award of \$2550.00 plus recovery of the \$100.00 filing fee. I authorize them to retain the \$1900.00 of deposit money they hold. They will have a monetary order against the tenants for the remainder of \$750.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 02, 2017

Residential Tenancy Branch