



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNDC MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed receipt of the landlords' dispute resolution hearing package for this application and evidence, I am satisfied that the landlords have served the tenants with this package and evidence in accordance with sections 88 and 89 of the *Act*. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for monetary loss, or money owed?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both parties agreed to the following facts. This 1 year fixed-term tenancy began on February 1, 2017, and ended on July 31, 2017. Monthly rent was set at \$1,400.00, and the landlords collected a security deposit and pet damage deposit of \$700.00 each, which the landlords still hold. The tenants provided a forwarding address upon move-out, and the landlords filed an application to retain this deposit within 15 days of this date.

The tenants testified that on July 4, 2017 they had verbal consent to move out early due to problems with the tenants upstairs. There was no written mutual agreement signed, nor did the tenants provide any written confirmation that the landlords had consented to the early end of this tenancy.

Both parties confirmed in the hearing that during the tenancy in May of 2017 a bylaw officer had contacted the landlords informing them that the landlords were prohibited from renting the home as two separate suites, but the illegal suite was not enforced, and the tenancy had continued. When the tenants had moved out on July 31, 2017, the landlords complied with the bylaw and did not re-rent the basement suite. Once the tenants in the upstairs suite moved out on October 31, 2017, the landlords re-rented the entire home for \$3,800.00 per month as of November 1, 2017. The landlords are seeking two month's rent, \$2,800.00, in compensation as the tenants had moved out before the end of the fixed-term tenancy, which was to end on January 31, 2018.

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 or 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

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants did not provide sufficient evidence to support that they had mutual agreement in writing to end this tenancy before the end of the fixed-term tenancy, as required by section 44(1)(c) of the *Act*. As it was undisputed that this tenancy ended before the date specified in the agreement, I then must consider whether the landlords has sufficiently mitigated their damages.

The landlords testified in the hearing that no efforts were made to obtain a new tenant for August 1, 2017 as they were informed in May of 2017 that the city bylaws prohibit the landlords from renting out the home as two separate suites. Although a city bylaw officer had informed the landlords of the bylaw infraction in May of 2017, the bylaw was not enforced, and the tenants remained in the suite until July 31, 2017. The upstairs suite was tenanted until October 31, 2017. Although the tenants had moved out before the end of the fixed-term tenancy, I am not satisfied that the landlords had suffered a financial loss of \$2,800.00 due to the tenant's failure to comply with section 44(1)(c) of the *Act*, as this tenancy continued despite the fact that city bylaws prohibited the renting of the two separate suites. Although this tenancy ended when the tenants moved out, I find that it was undisputed by both parties that the tenancy continued because the city

bylaw was not enforced. I find that the landlords' financial loss stems from the fact that they were unable to re-rent the suite due to the bylaw restriction, and not due to the early end of this tenancy. I, therefore, dismiss the landlords' monetary claim for two months' rent as well as their application to retain both the security and pet damage deposits.

As the landlords were not successful in their application, I dismiss their application to recover the filing fee.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$1,400.00 in the tenants' favour for the return of their security and pet damage deposits. The tenants are provided with this Order and the landlords must be served with a copy of this Order as soon as possible. Should the landlords fail to comply with this Order, this 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: March 19, 2018

Residential Tenancy Branch