



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDAL NORTH REAL ESTATE INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for unpaid rent, damages or compensation for losses under the *Act*, an order to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenants confirmed receipt of the Landlord's evidence submissions. The Landlord's Agent (the Agent) confirmed that the Tenants' evidence submissions had been received by her head office; however, she had not received them. An offer to adjourn the hearing was made to the Agent and agreed to by the Tenants. The Agent did not want to adjourn and confirmed that they wished to proceed.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

Both parties agreed they signed a one-year fixed term tenancy that began on June 1, 2017. Rent in the amount of \$1,350.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants issued written notice to the Landlord to end their tenancy, by registered mail, sent on March 29, 2018. The parties agreed that the tenancy ended on April 30, 2018, and that the move-out inspection was completed that same day. The parties also agreed that Tenants had provided their forwarding address to the Landlord and that the Landlord had returned the full pet damage deposit to the Tenants. The Landlord provided a copy of the move-out inspection into documentary evidence.

The parties agreed that the Agent had a staff member issue a written notice to the Tenants on April 10, 2018. The written notice stated the Landlord would be entering the rental unit on April 12, 2018, to show the rental unit to prospective new tenants. Both parties agreed that the Tenant V.C. wrote a hand-written note on that notice, and returned it to the staff member. The note stated, "You have been told "no" and you threatened no damage deposit on Easter Sunday."

The Agent testified that she took the Tenant's hand-written note to mean that the Tenants were denying her access to the suite, and the Agent did not attempt to show the rental unit on April 12, 2018, as planned. The Agent provided a copy of the notice with the Tenant's note on it into documentary evidence. The Agent also provided three emails, that the Agent testified were additional notices for showings where the Tenants had refused entry. The Agent testified that item 10 of the addendum attached to the tenancy agreement gave permission to the Landlord to serve legal notices to the Tenants through email.

"Tenancy Agreement Addendum

10. The tenants agree to accept email or text as a means of communication, including giving legal notice if a fax number is not provided"

The Tenants testified that they had requested that the Agent no longer attend the rental unit due to concerns for their safety. The Tenants testified that there were several other units, of the same size and layout, for rent in their complex, that they feel the Landlord

could have shown to potential renters. The Tenants also testified that there were several other employees of the Landlord at that location that could have conducted the showings, other than the Agent that they had requested no longer attend their rental unit. The Tenants testified that they do not believe that their request for the Agent not to attend the rental unit had interfered with the search for a new renter.

During the hearing, both parties testified that there had been a red substance found in the fridge and that the Landlord's Agent had removed the tin foil lining in the oven during the move-out inspection.

The Agent testified that there were two deficiencies noted on the move-out inspection, one being the red substance in the fridge, and oil stains in the bottom of the oven. The Agent is claiming \$25.00 for the costs associated with cleaning the fridge and the oven after the Tenants moved out. The Agent provided pictures of the oven and fridge into documentary evidence.

The Tenants testified that they had paid a cleaner to clean the apartment for them and they disagree that the oven was dirty during the move-out inspection. The Tenants provided pictures of the oven into documentary evidence.

The Agent testified that the advertisement for the rental unit listed the rent at \$1,750.00 a month. The Agent testified that they were able to find a new person to rent the unit as of May 26, 2018, for the monthly rental cost of \$1,750.00. The Agent testified that she believes that the Tenants actions of not allowing her into the rental unit for showings delayed the re-rental of the unit and cost the Landlord \$1,700.00 of rental income for May. The Agent testified that the Tenants should be held responsible for the new rent of \$1,750.00, less six days, as that is the income the Landlord would have received had the Tenants not interfered with the showings.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a one-year fixed term tenancy, beginning on June 1, 2017, in accordance with the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

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 tenancy could not have ended in accordance with the *Act* until May 31, 2018. I find that the Tenants failed to comply with the *Act* when they issued their notice to the Landlord to end their tenancy as of April 30, 2018.

I accept the Agent's testimony that she attempted to rent the unit as soon as possible. However, I do not accept that the Landlord was prevented from showing the rental unit by the Tenants. Section 29 of the *Act* allows a landlord to enter the rental unit after issuing a tenant written notice. However, section 89 of the *Act* limits how that written notice must be served.

- by leaving a copy with the person;
- if the person is a landlord, by leaving a copy with an agent of the landlord;
- by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- by leaving a copy at the person's residence with an adult who apparently resides with the person;
- by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- by transmitting a copy to a fax number provided as an address for service by the person to be served;

- as ordered by the director under section 71

I find that the written notice to enter the rental unit, personally served by C.C., a staff member of the Landlord, on April 10, 2018, was issued in accordance with the *Act*. Therefore, the Landlord was within their rights to have a member of their staff enter the unit for showings on the date and time stated on that notice. I understand that the Agent was respecting the request of the Tenants when she did not enter the rental unit for that showing. However, I find it reasonable that another member of the Landlord's staff may have conducted the showing on the Landlord's behalf.

I accept the emails provided into documentary evidence by the Agent as proof of a conversation between the parties and attempts to arrange additional showings. However, the emails do not meet the legal requirement for legal notice to enter a rental unit by the Landlord. I find that the Landlord had no legal right to enter the rental unit based on the emails provided in evidence. I caution the Landlord that section 5 of the *Act* states that the *Act* cannot be avoided, and any attempts to avoid or contract out of the requirement and provisions of the *Act* or the Regulation are of no effect. I note that item 10 of the addendum attached to the tenancy agreement, is not enforceable under the *Act*.

The Landlord has claimed for compensation for the loss of rental income for May 2018. Section 7 of the *Act* provides for an award for compensation for damages or loss as a result of a landlord or tenant not complying with the *Act*, the regulations or their tenancy agreement.

The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

I find the Landlord's decision to increase the requested rent by \$400.00, made it more difficult to re-rent the rental unit. The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides the following guidance:

"Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale."

I find that the Landlord's actions of increasing the rent to be unreasonable and inconsistent with their statutory requirement to mitigate their losses under the *Act*. Therefore, I am not allowing the Landlord's request to be compensated for the loss of rental income for May 2018.

The Landlord has also claimed for \$25.00 for cleaning at the end of tenancy. I accept the testimony of both the Agent and the Tenants that there was a red substance found in the fridge during the move-out inspection and that due to this, the fridge required additional cleaning. Therefore, I am granting the Landlord's request for \$25.00 to cover the cost for this cleaning.

As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover half of their filing fee paid for this application in the amount of \$50.00.

I allow the Landlord an award in the amount of \$75.00 and the Landlord must return the balance of the security deposit, \$600.00 to the Tenants.

Pursuant to section 38 and 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$600.00. The Order is comprised of the return of the Tenants' security deposit, less \$25.00 owed to the Landlord for cleaning and the return of \$50.00 of the Landlord's filing fee for this application.

Conclusion

I find that the Landlord did not meet the statutory requirement to mitigate their losses as required under the *Act*. Therefore, I am ordering the Landlord to return the Tenants security deposit, less the awarded costs for cleaning and the filing fee.

I find for the Tenants under sections 38 of the Act. I grant the Tenants a **Monetary Order** in the amount of **\$600.00** for the return of the Tenants security deposit, less the \$25.00 owed to the Landlord for cleaning, and the recovery of half of the Landlord's filing fee for this application. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: July 4, 2018

Residential Tenancy Branch