



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for a Monetary Order for return of the security deposit and return of rent paid. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenants sent their Application for Dispute Resolution and evidence to the landlord via registered mail on December 21, 2017. The landlord testified that he received the package on December 22, 2017.

The landlord had uploaded evidence to the Residential Tenancy Branch website three days before the hearing, on June 22, 2018. The tenant testified that she did not receive any evidence from the landlord. The landlord testified that he sent it to the tenants via regular mail on June 22, 2018. A respondent is required to serve their evidence at least 7 full days before the hearing date. If mail is used for service, the party serving documents must also allow for mailing time. I find that mailing evidence to the tenants on June 22, 2018 for a hearing scheduled for June 26, 2018 was insufficient and considering the tenants had not received it by the time of the hearing I did not give the landlord's documentary evidence further consideration. The landlord was; however, given the full opportunity to provide oral testimony during the hearing.

Issue(s) to be Decided

1. Are the tenants entitled to return of the security deposit?
2. Have the tenants established a basis for compensation equivalent to the rent paid for the month of December 2017?

Background and Evidence

The tenant viewed the rental unit on November 26, 2017 while it was still occupied by the former tenant. The tenant stated that when she viewed the unit on November 26, 2017 the unit was dimly lit and fully furnished; and, she was unable to view all the rooms because the previous tenant said his children had been put to bed.

Nevertheless, the tenants decided to rent the unit and on November 27, 2017 the tenants paid a \$600.00 security deposit and signed a tenancy agreement for a month to month tenancy set to begin on December 1, 2017 for the monthly rent of \$1,200.00 due on the first day of every month.

On December 1, 2017 the parties were supposed to meet in order for the tenants to get possession of the rental unit; however, the landlord could not make the appointment. The landlord told the tenant to meet another man referred to as MD, described by the landlord as his caretaker during the hearing, on December 2, 2017.

In the evening of December 2, 2017 the tenant picked MD up at a restaurant in her vehicle and they drove to the residential property. MD went into the property while the tenant waited in the car. MD returned with the keys to the rental unit which he gave to the tenant. The tenant then drove MD back to the restaurant. After dropping MD off, the tenant returned to the residential property and entered the rental unit. The tenant found the rental unit to be in deplorable condition and not suitable for habitation. The unit smelled badly, like a rotten animal, was filthy and damaged. The tenant saw cockroaches, a dead mouse, the walls were damaged, the cupboards doors were pulled off the hinges, and the window coverings were ripped down. The tenant took photographs of the condition of the rental unit and provided them as evidence.

The tenant testified that she left the rental unit the evening of December 2, 2017 and returned to her parent's home in another town. At approximately 10 a.m. the next morning she and her father called the landlord to inform him of the condition of the rental unit. The landlord said he was leaving town and that somebody would be in touch with her. The tenant testified that nobody called her or her father back. The

tenant wrote a letter to the landlord on December 4, 2017 and sent it to the landlord via registered mail. The letter was a formal notice that the tenant was ending the tenancy due to the condition it was found and requested return of the security deposit. The tenant also provided a forwarding address in the letter.

The tenant testified that she and her father tried contacting the landlord several more times but they were unsuccessful in reaching the landlord. The tenant never moved into the rental unit but did return to the property on December 11, 2017 to inspect the condition of the unit again. On December 11, 2017 the tenant found the rental unit was in even worse condition.

The tenant tried placing a stop-payment on the rent cheque for December 2017 on December 3, 2017 but she made an error in placing the stop-payment on-line and the rent cheque was cashed on December 7, 2017. The tenants proceeded to file this Application for Dispute Resolution on December 18, 2017 and they seek return of the security deposit and the rent paid for December 2017.

The landlord acknowledged that the tenant called him on December 3, 2017 as she stated; however the landlord thought the tenant would contact MD since he was leaving the country. The landlord was uncertain as to whether the tenant had MD's contact information.

The landlord received the tenant's letter of December 4, 2017 on December 22, 2017 when he returned from his travels. On the same date he received the tenants' Application for Dispute Resolution.

The landlord testified that he re-rented the unit starting January 2018. The landlord was agreeable that the security deposit should be returned to the tenants. The landlord was not agreeable to refunding the rent for December 2017 as it would leave him with a loss of rent for December 2017 if he did that.

MD was called to testify on behalf of the landlord. MD testified that on or about December 3, 2017 he went to the door of the rental unit and enquired with the tenant whether everything was satisfactory with the rental unit and she said it was. The tenant rebutted MD's testimony and testified that she had returned home on the evening of December 2, 2017 and they were not at the rental unit again until December 11, 2017. The tenant testified that MD never came by the rental unit and spoke with her.

Finally, the tenant acknowledged that she still has the keys to the the residential property and she will return those to the landlord.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The tenants requested return of the \$600.00 security deposit and the landlord agreed to return it to them. Therefore, I grant the tenants' request and I order the landlord to return the security deposit to the tenants.

With respect to the tenants' request for compensation equivalent to return of rent paid for December 2017, I find the tenants has satisfied me that they are entitled to such compensation for the following reasons.

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, the parties entered into a tenancy agreement on November 26, 2017 and the parties became obligated to fulfil the terms of tenancy starting December 1, 2017. The tenants were obligated to pay rent and the landlord was obligated to provide the tenants with possession of the rental unit on December 1, 2017.

The tenants gave the landlord a rent cheque dated December 1, 2017 and it was undisputed that the rent cheque was cashed by the landlord. The landlord was obligated to give the tenants possession of the rental unit on December 1, 2017; however, the landlord failed to do this because of his circumstances, not the tenants'. The tenant was provided possession of the unit in the evening of December 2, 2017 but without the benefit of a move-in inspection with the landlord or the landlord's agent as required under section 23, 2017 of the Act. Further, the landlord was obligated to provide the tenants with a rental unit that was repaired and maintained and suitable for occupation pursuant to section 32 of the Act. Section 32 of the Act requires that a rental unit be repaired and maintained so that it meets health and safety and building laws and is suitable for occupation by a tenant. Upon review of the photographs provided by the tenants, I accept the tenant's description of the rental unit and her position that the rental unit was not suitable for occupation. In my view, the rental unit was obviously in need of significant cleaning, repairs, and pest control treatments and it appears there was no attempt to deal with these issues between tenants.

I also find MD's testimony that he went to the rental unit on or about December 3, 2017 and confirmed with the tenant that the unit was satisfactory to be not credible in comparison to the other evidence the tenants provided for consideration and the tenant's rebuttal testimony. Accordingly, I reject MD's testimony and I prefer the tenant's testimony that MD did not make any such enquiry with the tenants.

A tenant who enters a month to month tenancy is required to give the landlord one full month of written notice to end tenancy. While the tenants did not give the landlord one full month of advance notice to end tenancy, I find the landlord significantly breached the tenancy agreement and the Act by failing to provide a rental unit at the start of the tenancy or in a condition suitable for occupation. Therefore, pursuant to the authority afforded me under section 44(1)(f) of the Act, I order the tenancy ended effective December 1, 2017.

Having ordered the tenancy ended on December 1, 2017 and the tenants did not even have benefit of use or occupation of the rental unit on December 1, 2017 I find the tenants entitled to recover the rent that was paid for the month of December 2017. Therefore, I grant the tenants' request and I order the landlord to return to the tenants \$1,200.00.

While I have no doubt the landlord will suffer loss of rent for the month of December 2017 due to my order above, upon review of the photographs provided to me, I am of the view that the landlord was not in a position to receive rent for this unit from a tenant given the obvious and desperate need of significant cleaning, repairs and pest control treatments.

Given the tenants' success in this application, I further reward the tenants' recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, I provide the tenants with a Monetary Order in the sum calculated as follows to serve and enforce upon the landlord:

Security deposit	\$ 600.00
Return of rent paid for December 2017	1,200.00
Filing fee	<u>100.00</u>
Monetary Order for tenants	\$1,900.00

Conclusion

The tenants have been provided a Monetary Order in the sum of \$1,900.00 to serve and enforce upon the landlord.

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 10, 2018

Residential Tenancy Branch