



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 2:00 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Tenant D.G. testified that on December 6, 2017, he personally served the landlord B.D.K. with a copy of the Application for Dispute Resolution and Notice of Hearing at her place of work. He obtained the address of her place of work from an online search. Tenant D.G. testified that he also sent a copy to the landlord C.A.N. by registered mail on this same date. The registered mail package was sent to an address provided by the landlord C.A.N. The package was returned to the sender as there was an incomplete address. The tenant testified that he then obtained a complete address from the landlord C.A.N. and resent the package on January 3, 2018. A registered mail tracking number was provided in support of service which indicates that the landlord C.A.N. signed for the package on January 15, 2018. The tenant testified that he did not send the hearing package to the landlord's address for service as provided in the tenancy agreement as he was advised by the landlord C.A.N. that he did not reside at that address.

Based on the above evidence, I am satisfied that the landlords were both served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing

pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlords.

Issues

Are the tenants entitled a monetary order for compensation for damage or loss?

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

Background and Evidence

The parties entered into a tenancy agreement on October 28, 2017 which was set to begin on December 1, 2017 with a monthly rent of \$1500.00 payable on the 1st day of each month.

On November 25, 2017, before the tenants had taken possession of the rental unit, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of February 1, 2018.

On November 30, 2017 the tenants provided the landlord with notice by e-mail to end the tenancy early on December 1, 2017. The tenants testified that they did not want to move into the rental unit and then have to move out again two months later. The tenants did not pay any rent for December 2018 and their security deposit was returned in full by the landlord.

The tenants are claiming the equivalent of one month's rent as compensation for notice to end tenancy for landlord's use of property. The tenants claim they did not get one month free rent under the Act.

Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

Pursuant to section 50 of the Act, a tenant may end tenancy early after being served with a Two Month Notice by giving the landlord at least 10 days written notice to end tenancy on a date that is earlier than the effective date of the landlord's notice. A notice under this section does not affect the tenant's right to compensation for the equivalent of one month's rent under section 51.

The landlord has not provided the tenants with an equivalent of one month's rent.

I allow the tenants' claim for an amount equivalent to one month's rent and award an amount of \$1500.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1600.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1600.00. 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 17, 2018

Residential Tenancy Branch