



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S

Introduction

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

- 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.

Preliminary Issue –Tenants' Evidence

The tenants testified in the hearing that they submitted their evidence on June 17, 2018. The landlords testified that they were not served with the tenants' evidence on time for the hearing.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the tenants to file and serve evidence was June 10, 2018.

I find that the tenants failed to serve the landlords their evidence package within the prescribed timeline in accordance with Rule 3.15. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. In this case, the landlords testified that they had not received the tenants’ evidence, and admitting this late evidence would be prejudicial to them as the landlords did not have the opportunity to review this evidence before the hearing. The RTB did not receive the tenant’s evidence until June 17, 2018, one day before the hearing. Furthermore, I find that the tenants did not provide sufficient proof of service to establish that their evidence was served upon the landlords within the timelines prescribed by rule 3.15 of the Rules. On this basis I find that there is undue prejudice to the landlords by admitting the tenants’ evidence. Thus I exercise my discretion to exclude the tenants’ evidence

Issue(s) to be Decided

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

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

Background and Evidence

This fixed-term tenancy began in March of 2013. The tenants and landlords signed a new tenancy agreement in May of 2017 for a fixed-term tenancy to end on March 28, 2018. Monthly rent was set at \$2,025.00. The tenant DR testified that she had moved out in September 2017, and the remaining two tenants moved out on October 28, 2017 according to the tenants’ testimony. The landlords testified that the tenants had moved out on October 29, 2017. The landlords had collected a security deposit in the amount of \$1,000.00, which they still hold. The tenants provided a forwarding address by text message sometime between October 30, 2017 and November 7, 2017.

The landlords are seeking \$1,000.00 in compensation for the early end of this tenancy. The landlords testified that they were unable to re-rent the home until November 28, 2017 as the tenancy ended in the winter, and the landlord required time to repaint and repair the home after the tenants moved out. The landlord testified that the tenants had replaced the door handles and painted the home without their permission to do so. The landlords testified that the home was re-painted before the beginning of this tenancy.

The tenants admit that they had changed the locks, and that they had repainted the home without the landlords' permission.

The tenants testified that they had the verbal consent of the landlords to move out before the end of this tenancy. No written mutual agreement was provided in support of this agreement.

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 evidence of the landlords is that they were able to re-rent the suite, and the landlords are claiming \$1,000.00 for loss of rental income. I am satisfied that the landlords had made efforts to mitigate the tenants' exposure to the landlords' monetary loss of rent as is required by section 7(2) of the *Act* by listing and re-renting the suite as soon as possible. I, therefore, allow the landlords' monetary claim for loss of rental income.

As the landlords were successful with their application, I allow the landlords to recover the filing fee for this application from the tenants.

The landlords continue to hold the tenants' security deposit of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit of \$1,000.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I find that the landlords are entitled to their monetary claim.

I issue a Monetary Order in the amount of \$100.00 in the landlords' favour, which allows for the landlords to retain the tenants' security deposit in satisfaction of their monetary claim, as well as recover the filing fee for this application. The landlords are provided with this Order and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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 20, 2018

Residential Tenancy Branch