



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, 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 damages or compensation for losses under the *Act*, 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 confirmed receipt of the Tenant's evidence submissions; however, the Landlord testified that she had received the Tenant's evidence five days before the hearing. An offer to adjourn the hearing was made to the Landlord, the Landlord did not want to adjourn and confirmed that she 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 the return of their filing fee for this application?

Background and Evidence

Both parties agreed they signed a nine-month fixed term tenancy that began on September 3, 2017. Rent in the amount of \$1,500.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$750.00 at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that she and the tenant had agreed to the exchange of legal notice, in relation to this tenancy, via email, and that agreement had been detailed in the tenancy agreement.

Both the parties agreed that the Tenant gave notice to the Landlord via email, on February 21, 2018, that the Tenant would be ending the tenancy early as of March 30, 2018. As they had purchased a home in the area and would be taking possession of that home on March 15, 2018. The Tenant provided copies of the email exchange between the Landlord and the Tenant into documentary evidence.

The Landlord testified that she was in central Canada at the time she received the Tenant's notice and would not be returning to the area until May 2018. The Landlord testified that she was not able to attend the move-out inspection or make attempts to re-rent the rental unit due to her being out of town. The Landlord testified that she arranged for a friend (the Agent), who lived in the building, to conduct the move-out inspection for her.

The Landlord and the Tenant testified that the move-out inspection was conducted on April 12, 2018, and that the Tenant and the Agent were both in attendance. The Tenant testified that during the move-out inspection her and the Agent had agreed that \$50.00 worth of additional cleaning was required, but that no other deficiencies had been noted. The Tenant testified that she returned the key to the rental unit to the Agent. The Tenant provided 12 pictures of the rental unit taken at the time of the move-out inspection.

The Landlord testified that when she got back in to town, and was able to inspect the rental unit herself, she noted that the rental unit required more cleaning than had been agreed to by her Agent during the move-out inspection, and that the fridge had been damaged. The Landlord provided a receipt for 5 hours of cleaning, and eight pictures of the required cleaning.

The Landlord is requesting an additional \$100.00 for cleaning, \$1,500.00 in lost rental income for April 2018, and \$280.00, which represents a verbal estimate to repair the fridge.

Both Parties agreed that the Landlord returned the security deposit to the Tenant, less the agreed upon amount of \$50.00 for cleaning the rental unit.

Analysis

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

I find that the parties entered into a nine-month fixed term tenancy, beginning on September 3, 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 notice to the Landlord to end the tenancy as of March 31, 2018.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

In this case, I find that the Tenants breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient verbal testimony to prove the value of that loss. However, I find that the Landlord did not act reasonably to minimize her damages or losses due to the Tenants' breach, when she did not attempt to try and re-rent the rental unit for April 2018.

I understand that the Landlord had been out of town when the Tenants gave their notice to end their tenancy. However, the fact that the Landlord was not in town when the Tenants decided to end their tenancy early does not negate the Landlord's responsibility to mitigate her losses by taking the appropriate steps to attempt to re-rent the unit as soon as she found out the Tenant's had decided to end the tenancy early.

I find that the Landlord was in breach of section 7 of the *Act* when she did not take steps to rent the rental unit after being notified that the Tenants had decided to end the tenancy early.

Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of April 2018.

I accept the testimony of both parties that the move-out inspection had been conducted, on April 12, 2018, and that the only deficiency noted at that time was some additional cleaning that the Tenant and the Agent had agreed to a \$50.00 deduction from the security deposit to cover.

I also accept the testimony of both parties that the Landlord amended the move-out inspection after the inspection took place, between the Tenant and the Agent on April 12, 2018. The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy; it is required that this document is completed in the presence of both parties.

The act of amending this document in the absence of the other party decreases the evidentiary reliability this document may have had in these proceedings. Additionally, when a Landlord assigns an agent to act on their behalf during any part of the tenancy, including the move-out inspection, the Landlord is bound by the agreements and decisions made by that Agent. There is no legal ability to insist on amendments, changes or make additions to those agreements, made by their assigned agent, after the fact.

I find the Tenant and Agent conducted a legally binding move-out inspection on April 12, 2018. I find that the rental unit was returned to the Landlord on April 12, 2018, in satisfactory condition, less the agreed cost of \$50.00 for additional cleaning, which has already been recovered by the Landlord. I also find that the Landlord had not provided any documentary evidence to support her claim for compensation for damage to the fridge.

Therefore, I dismiss the Landlord's claim for compensation for damages not noted at the time of the inspection.

As the Landlord was not successful in her application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her application.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

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 23, 2018

Residential Tenancy Branch