



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, RPP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 11, 2018 (the “Application”). The Tenants applied for the following: return of their personal property; compensation for monetary loss or other money owed; return of security and pet deposit; and reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed she received the hearing package. The Landlord had not received four photos submitted by the Tenants. The Tenants were not able to confirm that they served the four photos on the Landlord. I excluded the photos as I was not satisfied they were served as required by rule 3.1 and 3.14 of the Rules of Procedure. The Tenants confirmed they received the Landlord’s evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of their personal property?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to the return of the security and pet deposit?
4. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

Security and pet deposit

The parties agreed on the following. There was a written tenancy agreement between the parties in relation to the rental unit. The tenancy started July 1, 2017 and was a month-to-month tenancy. Rent was \$1,000.00 with an additional \$45.00 for internet. Rent was due on the first day of each month. The Tenants paid a \$700.00 security deposit and \$50.00 pet damage deposit.

The parties agreed the tenancy ended due to a flood and the rental unit becoming uninhabitable. The parties agreed the Landlord still holds the deposits.

Tenant J.E. testified that the Tenants provided the Landlord their forwarding address in writing July 18, 2018. The Tenants had submitted this letter although I note that it is a word document that can still be changed that was uploaded not a photo or scanned copy of the letter. Further, the letter is not signed. Tenant J.E. testified that the letter was attached to the Landlord's door.

Tenant J.N. testified that the letter was left in the mailbox at the Landlord's front door. Tenant J.N. then testified it was given to the Landlord in person at her front door on July 19, 2018.

The Tenants had not submitted any evidence to support their position in relation to providing their forwarding address to the Landlord other than the word document of the letter.

The Landlord testified that she did not receive the Tenants' forwarding address except in August as evidence for this hearing.

Compensation of \$666.67

The Tenants requested \$666.67 as reimbursement for a portion of their May rent. There was no issue that the rental unit was flooded due to natural causes. The Tenants submitted that the *Frustrated Contract Act* applies in the circumstances. The Tenants submitted that neither party was responsible for the situation and the Tenants had paid rent for May. The Tenants submitted that they should be compensated for the portion of rent for May that they could no longer live in the rental unit due to the flood damage. The Tenants testified that the flood caused such damage to the rental unit that they were no longer able to live in it.

I understand from the evidence that the Tenants had to evacuate the rental unit around May 10th. The Tenants submitted the tenancy ended May 15th.

The Landlord agreed the tenancy was frustrated as the rental unit was uninhabitable after the flood. She testified about having to remove the Tenants' belongings from the rental unit and clean up without their assistance.

Return of personal property

In relation to the return of personal property, the Tenants sought three fans, a cable and plants. In relation to the plants, the Tenants testified that they planted plants and vegetables in the garden at the rental unit and asked that these be returned to them.

The Landlord disagreed that she has three fans or a cable belonging to the Tenants. The Tenants did not submit any evidence in support of their position.

The Landlord testified that the garden is in a terrible state. She said it is contaminated from the flood. She agreed the Tenants planted the items sought.

Analysis

Security and pet deposit

Section 39 of the *Act* allows a landlord to keep a security and pet deposit if tenants do not provide their forwarding address within one year after the end of the tenancy.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security and pet deposit held at the end of a tenancy and states:

- 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing.

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(emphasis added)

I am not satisfied the Tenants provided their forwarding address in writing to the Landlord in a letter on July 18th or 19th. The Landlord disputed this. The Tenants gave conflicting evidence about this. The letter uploaded is a word document that can be changed and is unsigned. I do not find this to be strong support for the Tenants' position. The Tenants did not provide any further evidence to support their position. In the circumstances, I cannot find that the Tenants provided the Landlord with their forwarding address prior to August.

The Landlord acknowledged receiving the forwarding address in August as evidence for this hearing. This was not sufficient to trigger section 38(1) of the *Act*.

The Tenants must serve the Landlord with their current forwarding address in writing in accordance with the *Act*. The Landlord must comply with section 38(1) of the *Act* upon receipt of the forwarding address. The Tenants' request for the return of the deposits is dismissed with leave to re-apply if the Landlord fails to comply with the *Act*.

Compensation of \$666.67

The parties agreed the rental unit was uninhabitable after the flood and that the tenancy agreement was frustrated.

Pursuant to section 92 of the *Act*, "[the] *Frustrated Contract Act* and the doctrine of frustration of contract apply to tenancy agreements".

Policy Guideline 34 deals with frustration and states:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

...

The *Frustrated Contract Act* deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the *Frustrated Contracts Act*, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

I understood the Tenants to say the tenancy ended May 15, 2018 and I accept this based on the evidence provided. There was no issue that the Tenants had paid rent for May. I find the circumstances here to be addressed in Policy Guideline 34 and find the Tenants are entitled to the return of the rent paid for May 16th to May 31st.

The Landlord focused on the fact that the Tenants did not prepare for the flood or assist in cleaning up after the flood. I do not find this relevant. The Tenants are compensated for the rent from May 16th to May 31st because the rental unit was uninhabitable. Their action or inaction is not relevant to this.

I find the Tenants are entitled to 16 days of rent which I calculate to be \$516.13.

Return of personal property

The Tenants sought the return of three fans, a cable and plants. The Landlord disputed that she had the three fans and cable. The Tenants did not provide evidence to support their position. I decline to order the return of these items as I am not satisfied the Landlord has them.

In relation to the plants, the Tenants did not provide a list or outline of which plants they sought the return of. The Tenants did not provide evidence that could assist me in determining which plants and vegetables to order the return of. I do not find it appropriate to issue a blanket order that the Landlord return all plants and vegetables on the property. I decline to issue an order in relation to the plants given the lack of particulars provided about this issue.

The request for the return of personal property is dismissed without leave to re-apply.

Given the Tenants were partially successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The request for the return of the security and pet deposit is dismissed with leave to re-apply. The Tenants must serve the Landlord with their forwarding address in writing in accordance with the *Act*. The Landlord must comply with section 38(1) of the *Act* upon receiving the forwarding address. If the Landlord does not comply with section 38(1) of the *Act*, the Tenants can re-apply for return of the deposits.

The Tenants are entitled to reimbursement for 16 days of rent which I calculate to be \$516.13. The Tenants are also entitled to reimbursement for the \$100.00 filing fee. I grant the Tenants a Monetary Order for \$616.13. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

The request for the return of personal property is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 18, 2018

Residential Tenancy Branch