



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of rent paid for a period following the end of tenancy. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issues to be decided

Is the tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that they had entered into a fixed term tenancy agreement for a tenancy that started on November 15, 2017 and was due to end on November 15, 2018. The monthly rent was \$2,000.00 payable on the fifteenth of each month.

The parties testified that on June 10, 2018 the parties came to an agreement to end the tenancy effective June 21, 2018. A copy of the mutual end to tenancy agreement was filed into evidence. The tenants moved out on June 21, 2018 and their deposits were returned to them.

The tenants testified that they had paid rent up to July 15, 2018 and had requested the landlord to return the unused portion of rent. The landlord testified that the tenancy was a fixed term tenancy and the tenants breached the agreement when they requested her to release them from the fixed term and therefore she was entitled to retain the rent paid until July 15, 2018. The landlord agreed that she had found a new tenant for July 01, 2018.

Analysis

Section 44 of the *Residential Tenancy Act* addresses how a tenancy ends. Section 44(1)(c) states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

In this case the parties testified that they had mutually agreed to end the tenancy effective June 21, 2018 and the tenants moved out on that date. A tenant is not required to pay rent after the tenancy has ended and therefore the landlord is not entitled to collect rent after June 21, 2018. The landlord agreed that she had in her possession rent collected from the tenant to cover the period of June 15 to July 15, 2018 and also testified that she had a new tenant who had paid rent effective July 01, 2018.

Based on the above, I find that the landlord was not entitled to rent after June 21, 2018. However, since the tenants have applied for the return of \$1,000.00 for the period of July 01 to July 15, 2018 and not for the entire amount of overpaid rent, I award them \$1,000.00.

The tenants have proven their claim and are entitled to the recovery of the filing fee of \$100.00.

The tenants have established a total claim of \$1,100.00. I grant the tenants a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenants a monetary order in the amount of \$1,100.00.

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: October 18, 2018

Residential Tenancy Branch