



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 tenants' 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 their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 15, 2016 on a fixed term tenancy ending on July 1, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 30, 2016. The monthly rent was \$1,000.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid on June 14, 2016.

The tenants seek a monetary claim of \$1,050.00 which consists of January 2018 paid monthly rent. The tenants stated that they were served with a Two Month Notice to End Tenancy for Landlord's Use dated January 16, 2018 with an effective end of tenancy date of March 31, 2018. The stated reason for cause listed is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenants claim that written notice to end the tenancy was given to the landlord on January 19, 2018 for January 31, 2018 and that monthly rent for January 2018 was already paid. The tenants' claims that notice was given to the landlord in response to complying with the 2 month notice dated January 16, 2018. The Tenants claim that the landlords have refused to reimburse the tenants for the \$1,050.00 compensation equal to one months' rent as per the 2 month notice.

The landlords dispute this claim arguing that the tenants had vacated the rental unit as a result of a 1 Month Notice to End Tenancy for Cause dated December 26, 2017 on December 21, 2017. An effective end of tenancy date of January 31, 2018 was shown and the reason for cause selected was:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The provided details of cause state:

MATERIAL TERM OF TENANCY AGREEMENT "NO PETS" BREACHED
12/20/2017- NOTICE OF MATERIAL BREACH WITH 5 DAYS TO RECIFY
PROVIDED 12/21/2017- NOTICE TO END TENANCY TENDERED DUE TO
NON COJMPIANCE WITH NOTICE OF MATERIAL BREACH 5 DAY
ALLOWANCE TO REMOVE PET.

A copy of a letter was submitted dated December 21, 2017 to the tenant, J.S. stated in part, "...a breach of a material term of your tenancy agreement. I refer you to page 1 of our tenancy agreement, where it states, NO PETS ALLOWED. Section 47(1) of the Residential Tenancy Act and section 40(1) allows me to end your tenancy with one month's notice if the breach is not corrected by 5 DAYS. Please consider this letter your final warning to correct the behaviour. If find that the described behaviour continues past the date listed above, I will then serve you a One Mont Notice to End Tenancy and then proceed with an application for dispute resolution with the Residential Tenancy Branch to end your tenancy..."

The landlord claims that the 2 month notice dated January 16, 2018 had been issued in error, but did not notify the tenants of this error. The tenants argued that they were verbally notified that the landlord had cancelled the 1 month notice dated December 26, 2017. The landlord has disputed that the 1 month notice was cancelled.

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/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.

The landlord claimed that an error had occurred in issuing the 2 month notice and that the tenants were complying with the 1 month notice by vacating the rental unit on January 31, 2018, the same effective end of tenancy date for both notices. The tenants argued that they were verbally notified by the landlord that he had cancelled the 1 month notice dated December 26, 2017 and then issued 2 month notice dated January 16, 2018 to move forward. The tenants claim that they were complying with the 2 month notice and had given written notice on January 19, 2018 to end the tenancy on January 31, 2018. The tenants were unable to provide supporting evidence that the 1 month notice dated December 26, 2017 was verbally cancelled by the landlord. The landlord was unable to provide any supporting evidence that the 2 month notice was issued in error and cancelled.

I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord. In this case both parties confirmed that both a 2 month notice dated January 16, 2018 and a 1 month notice dated December 26, 2017 were served by the landlord upon the tenants. I find that the tenants were verbally notified of the cancellation of the 1 month notice as the landlord had subsequently issued and served a 2 month notice dated January 16, 2018. The landlord was also unable to provide sufficient evidence of cancelling the 2nd notice and I find it improbable that the landlord would serve a 2 month notice for completely different reasons as shown between the two notices. On this basis, I find that the tenants provided proper notice to end the tenancy on January 19, 2018 for January 31, 2018. Both parties confirmed that the monthly rent of \$1,050.00 for January 2018 had been paid and I find the tenants are entitled to compensation of \$1,050.00 for complying with the 2 month notice dated January 16, 2018.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,150.00.

This order must be served upon the landlord. 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.

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: September 17, 2018

Residential Tenancy Branch