



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord's agents (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed they are agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the landlord confirmed receipt of the tenants' application and evidence. The landlord confirmed that they did not provide documentary evidence for this hearing. As the landlord did not raise any issues regarding service of the application or the evidence, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for damage or compensation under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on September 1, 2016 on a fixed term until August 31, 2017 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,295.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$625.00 at the start of the tenancy, which the landlord later returned to the tenants at the end of the tenancy.

During the hearing, the parties agreed that on June 25, 2018 a mutual agreement to end tenancy form was signed by the landlord and tenants, with an effective date of July 21, 2018. The tenants paid July rent in full and pursuant to the mutual agreement; the tenants vacated the unit on July 21, 2018. The tenants now seek the return of rent paid for July 22, 2018 to July 30, 2018 in the amount of \$403.20 ($\$1,250.00/31 \text{ days} = \$40.32 \times 10 \text{ days}$).

In reply the landlord testified that they were not obligated to return the 10 days rent because it was the tenants' actions with a fellow neighbour that led to the agreement to end the tenancy. Further, the landlord testified that they could not re-rent the unit until August 1, 2018.

Analysis

Section 44 of the *Act* establishes that a tenancy may end if the landlord and tenants agree in writing to end the tenancy. Under the *Act*, rent means money paid or agreed to be paid in exchange for possession of the rental unit.

Regardless of what led to the mutual agreement to end tenancy, the parties agreed in writing on June 25, 2018, that the tenancy would end on or before July 21, 2018. There is no dispute that the tenants paid July rent and the landlord obtained possession of the unit July 21, 2018. I find the tenants did not end the tenancy contrary to the *Act* and the landlord failed to mitigate any loss by making reasonable efforts to find a new tenant to move in July 21, 2018. Based on the above, I find the tenants are entitled to the return of rent paid for July 22, 2018 to July 30, 2018 in the amount of \$403.20.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$503.20.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$503.20.

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: December 14, 2018

Residential Tenancy Branch