



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S (Landlord)
 FFT, MNDCT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed the application October 13, 2018 (the “Tenants’ Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Landlord filed the application October 23, 2018 (the “Landlord’s Application”). The Landlord applied for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

Agents for the Landlord appeared at the hearing. The Tenant appeared at the hearing.

The parties confirmed who should be named as the Landlord and who should be named as the Tenants and this is reflected in the style of cause.

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 Agents for the Landlord confirmed they received the hearing package for the Tenants’ Application. The Agents had not received the Tenants’ evidence. The Tenants had only submitted evidence of service, a Monetary Order Worksheet and an e-transfer. The Tenant could not confirm whether the e-transfer was served on the

Landlord. I excluded this as I was not satisfied it was served in accordance with the Rules of Procedure.

The Tenant confirmed he received the hearing package and evidence for the Landlord's Application.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant confirmed the Tenants are seeking return of the original amount of the security deposit and pro-rated rent for September.

The Landlord sought to keep the security deposit and pro-rated rent for September.

The Agents for the Landlord testified as follows. The parties agreed the tenancy would begin September 8, 2018. The Landlord received the security deposit and pro-rated rent for September on September 5, 2018. It was agreed rent would be \$1,795.00 per month and that the tenancy would be a month-to-month tenancy. G.K. attended September 8th and the Tenant advised that the Tenants would not be moving into the rental unit. The Landlord and Tenants were going to complete a written tenancy agreement at the time of move-in. The Agents referred to email correspondence submitted as evidence in this regard.

G.K. testified that she showed the rental unit to the Tenant. She said the Tenant submitted an application for the rental unit and was approved.

The Tenant agreed with the testimony of the Agents. He testified as follows. The Tenants applied with the Landlord to look at rentals. Agents for the Landlord showed the Tenants rentals. The Tenants decided to take the rental unit on September 5th but it needed cleaning and a repair of a window. At the time of move-in, the Tenants decided not to move in given issues with the rental unit. The Tenants never gave written notice that they were not taking the rental unit.

During his submissions, the Tenant stated that the Tenants would not mind paying the rent because they did commit to the rental unit.

The Tenant testified further as follows. There was no document signed. The Tenants did pay the security deposit and pro-rated rent for September on September 5th. The Tenants agreed they would move into the rental unit September 8th. The parties had agreed rent would be \$1,795.00 per month. The Tenants agreed to rent the rental unit for a one-year term. The parties were going to sign a written tenancy agreement.

The Agents advised that there was no pet deposit and that the Landlord still holds the security deposit.

The Tenant advised that the Tenants never provided the Landlord with their forwarding address in writing.

The parties agreed no move-in or move-out inspections were done given the Tenants never moved into the rental unit.

D.S. testified that the Landlord advertised the rental unit immediately after the Tenants decided they were not moving in. She said the Landlord advertised on local websites, the Landlord's own website and on a social media platform. D.S. testified that the rental unit was not re-rented until October 22, 2018. She confirmed the Landlord advertised the rental unit for the same rent amount as the Tenants had agreed to pay. She testified that the rental unit was rented for less than the rent amount agreed to by the Tenants.

The Tenant submitted that he does not think it costs the Landlord money to re-rent the rental unit given they have their own website. He also mentioned that the Landlord has a lot of properties that are not rented out.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Section 38(1) of the *Act* requires a landlord to return a security deposit or claim against it within 15 days of the later of the end of the tenancy or receiving the tenant's forwarding address in writing.

I find section 38(1) of the *Act* was not triggered in this matter as the Tenant acknowledged that the Tenants never provided the Landlord with their forwarding address in writing. Therefore, the Landlord has complied with section 38(1) of the *Act*.

The definition of a tenancy agreement in section 1 of the *Act* is as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

[emphasis added]

I find the Tenants entered into a tenancy agreement with the Landlord when they agreed to rent the rental unit, agreed on the terms of the tenancy and paid the security deposit and pro-rated rent for September. Both parties agreed this occurred September 5th. As of September 5th, the Tenants had entered into a verbal tenancy agreement with the Landlord and were bound by that agreement.

I do not find it relevant that the written tenancy agreement was not signed given that the *Act* contemplates verbal tenancy agreements.

It is not relevant that the Tenants never moved into the rental unit given section 16 of the *Act* which states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The parties gave conflicting testimony about whether this was a month-to-month tenancy or fixed term tenancy. In the absence of clear evidence on this point, I am not satisfied it was a fixed term tenancy and find it was a month-to-month tenancy.

There is no issue that the Tenants did not move into the rental unit as agreed. Both parties agreed the Tenants advised that they would not be moving into the rental unit on September 8th, the start date of the tenancy.

Section 45 of the *Act* outlines when and how tenants can end a tenancy and states the following in relation to month-to-month tenancies:

45 (1) A tenant may end a periodic 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, and

(b) 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.

...

(4) A notice to end a tenancy given under this section must comply with section 52...

The parties could not say when rent was going to be due. The email submitted outlines the pro-rated rent for September 8th to 30th. I am satisfied based on this that rent for October would be paid October 1st and that the intention was not that the payment period would run from September 8th to October 8th. I am satisfied that the earliest the Tenants could have ended the tenancy in accordance with the *Act* was October 31, 2018.

Under section 53 of the *Act* the effective date of the Tenants' notice is deemed to be changed to the date that complies with the *Act* which would be October 31, 2018. The Tenants are responsible to pay rent up until this date.

I find the Tenants breached the *Act* by ending the tenancy agreement earlier than permitted.

I find the Landlord is entitled to keep the September rent in the amount of \$1,360.00.

I accept that the rental unit was not re-rented until October 22, 2018. I accept that the Landlord lost rent for October 1st to October 21st given the Tenants' breach. I find the Landlord lost \$1,215.96 in rent for this period. I accept that the Landlord minimized their loss by re-listing the unit immediately and by renting it for less rent. I find the Landlord is entitled to keep the \$897.50 security deposit for the loss of rent from October 1st to October 21st.

The Tenants are not entitled to the return of the security deposit or September rent.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord is issued a Monetary Order for this amount.

Given the Tenants were not successful, I decline to award them reimbursement for the filing fee.

Conclusion

The Landlord is entitled to keep the security deposit and September rent for a total of \$2,257.50. The Landlord is entitled to reimbursement for the \$100.00 filing fee and is

issued a Monetary Order for this amount. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The Tenants' Application 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: February 27, 2019

Residential Tenancy Branch