



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenants' Application and evidence. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

The tenants testified that this tenancy was to begin on September 1, 2018, but the tenants were never able to move in. No written tenancy agreement was ever signed by

both parties, but rent was set at \$1,600.00 per month, and the tenants paid a security deposit of \$800.00 and a pet damage deposit in the amount of \$300.00 to the landlord on August 3, 2018. On August 18, 2018, the landlord returned both deposits to the tenants, and was told the unit was rented out to other tenants.

The tenants testified that they had attempted to sign a tenancy agreement with the landlord, but the landlord kept changing the date, and were told that one would be signed on the move-in date. The tenants were able to find a new home to rent on August 26, 2018 for \$1,540.00 per month, and are requesting compensation for the moving costs associated with the early revocation of this tenancy. Although the tenants' application is for \$1,000.00, the tenants submitted a moving invoice in the amount of \$880.92 for a move on August 26, 2018.

The landlord testified in the hearing that no move-in date was ever agreed on by both parties, and the only arrangement that was ever made was for the tenants to store their belongings in containers at the rental property. The landlord did not dispute that both deposits were paid, but that tenancy agreements are only signed at the agreed on move-in date. The landlord testified that they had decided the tenants were not a good fit after doing some further investigation, and were concerned about their ability to afford the monthly rent. The landlord testified that he was instructed to cancel the application and return the deposits. The landlord testified that they had offered to move the tenants' belongings to another location, but the tenants declined this offer.

Analysis

The definition of a "tenancy agreement" is outlined in the following terms in section 1 of the *Act*:

"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;

Section 16 of the *Act* states the following about when a tenancy agreement takes effect.

Start of rights and obligations under tenancy agreement

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.

A tenancy can exist in the absence of a written tenancy agreement. I find that in this case, it was undisputed by both parties that the tenants paid the landlord both a security and damage deposit, and the monthly rent was discussed between both parties. Furthermore, the landlord had allowed the tenants to start moving their belongings to the rental site. I find that these actions, alone, already imply that a tenancy was agreed upon. The landlord admitted in the hearing that the landlord had changed their minds about the tenants' suitability, and returned their deposits under the belief that this tenancy did not exist yet as no agreement was ever signed.

In light of the undisputed facts before me, I find that the both parties had entered into a tenancy agreement the date both deposits were accepted by the landlord, on August 18, 2018. The landlord testified that tenancy agreements are signed on the move-in date. Whether this information is true or credible, I find the landlord's own testimony further supports the fact that tenancies between both parties are agreed upon, regardless of whether a written tenancy agreement exists. Tenants must make arrangements prior to the date a tenancy begins, including giving notice to previous landlords, and making moving arrangements, and would not do so if there was a possibility that the tenancy may not begin, especially if this date coincided with the move-in date, or in this case 13 days before the tenancy was to begin. I find that the tenants were understudy under the impression that this tenancy was to begin on September 1, 2018, and I find that this tenancy was to commence on that date even though a written agreement was never signed.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that both parties had agreed to enter into a tenancy agreement that was to begin on September 1, 2018. Both parties, as stated in Section 16 of the *Act*, were therefore bound by the rights and obligations required by this tenancy agreement and *Act* despite the fact that the tenants were never able to occupy the rental unit. I find that the landlord had unilaterally decided to end this tenancy before the tenants were able to move in. Neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy to the tenants. The landlord did not have an Order of Possession, nor do I find that that the tenants abandoned this tenancy. Based on these

facts, I find that the landlord failed to comply with section 44(1) of the *Act* in ending this tenancy.

I accept the tenants' evidence that as a result of the revocation of this tenancy agreement, the tenants had to unexpectedly move their belongings a second time to their new residence. I find that the tenants provided sufficient and detailed evidence to support the value of the monetary loss claimed by the tenants. Although the landlord's testimony was that they had offered to assist the tenants with moving their belongings, I find that they did not provide sufficient evidence to support this fact. I am satisfied that the tenants had made an effort to mitigate the landlord's exposure to the tenants' monetary losses as is required by section 7(2) of the *Act*. I find that the tenants' monetary claim for the reimbursement of the cost of moving to be reasonable considering that the landlord ended the tenancy before the tenancy was to begin, in a manner that contravened the *Act*. Accordingly, I find that the tenants are entitled to a monetary order in the amount of \$880.92 in satisfaction of the monetary loss suffered by the tenants due to the landlord's failure to comply with section 44(1) of the *Act*.

As the tenants were successful in her application, I allow the tenants to recover the filing fee for this application.

Conclusion

I find that the tenants are entitled to a monetary order in the amount of \$880.92 plus the cost of the filing fee for this application. I issue a monetary order in the tenants' favour in the amount of \$980.92.

The tenant(s) are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: February 20, 2019

Residential Tenancy Branch