



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

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 obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Tenant T.C. (the tenant) stated that she would be the primary speaker for the tenants in this matter.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package which was sent by way of Canada Post registered mail on October 18, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord has been duly served with the Application and evidentiary package.

The tenant acknowledged receipt of the evidentiary package which was personally served to four of the five tenants. The tenant submitted that the evidence package was for a future hearing and not for the current hearing.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing.

As the tenant confirmed that they received an evidence package associated with the matter before me in accordance with the Rules, and were able to refer to it in the hearing, I find that the tenants are duly served with landlord's evidentiary package in accordance with section 88 of the Act and the Rules.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit?

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

Background and Evidence

Written evidence that this fixed term tenancy began on August 01, 2018, with a monthly rent of \$3,000.00, due on the first day of each month. The landlord and tenant confirmed that the tenants paid a security deposit in the amount of \$1,500.00. The tenancy agreement indicates that laundry is included and free.

The tenants also provided in evidence;

- Copies of receipts for \$1,500.00 paid to the landlord on July 24, 2018, for half of the rent and for \$1,500.00 paid to the landlord on July 31, 2018, for payment of the other half of the rent;
- A copy of a text from the landlord indicating that the occupants in the rental unit will move upstairs at the end of July sent sometime around the first rent payment of \$1,500.00;
- A copy of an e-mail dated July 19, 2018, between an occupant of the rental unit and the landlord questioning why there are tenants moving into the rental unit when the occupants are still residing there. The e-mail states that they do not want to move to the upper unit for the remainder of their agreement but are willing to move in the middle of the month for a rent reduction;
- A copy of a text message dated August 15, 2018, in which Tenant A.N. questions the landlord about moving into the rental unit as the occupants have indicated that they will not vacate the rental unit until the end of August 2018;

- A copy of an e-mail dated August 18, 2018, from the occupants to the landlord stating that they are moving upstairs and a group of males (some of the tenants) from upstairs are moving into the rental unit;
- A copy of an e-mail from Tenant T.C. and Tenant L.K. to the landlord dated August 23, 2018, in which the tenants give notice to terminate the tenancy agreement due to not being able to move into the rental unit because there were other occupants in the rental unit and that the tenants were forced to live in the upper unit;
- The landlord responds by e-mail on August 24, 2018, that the tenants agreed to live upstairs temporarily on July 20, 2018, and then paid half of the rent on July 24, 2018, and the other half on July 31, 2018, just prior to moving into the upstairs unit on July 31, 2018;
- A copy of a letter dated August 23, 2018, which was sent by registered mail to the landlord, requesting the return of the security deposit, reimbursement for August 2018 rent in the amount of \$3,000.00 and incidental expenses in the amount of \$3,460.00. The tenants' forwarding address is not on this letter; and
- A copy of a Monetary Order Worksheet which details the tenants' claim as follows:

Item	Amount
Rent for August 2018	\$3,000.00
Security deposit X 2	3,000.00
Difference in rent for three male tenants	7,320.00
Difference in rent for two female tenants	5,040.00
Requested Monetary Award	\$18,360.00

The landlord provided in evidence:

- A copy of an e-mail dated July 31, 2018, from outgoing occupants of the upstairs unit to the landlord regarding laundry facilities that are leaking;
- A copy of an e-mail dated August 13, 2018, from the occupants to the landlord that the occupants would be vacating the basement suite on August 18, 2018;
- A copy of an e-mail on August 25, 2018, to the tenants regarding the tenants' lack of response for 24 notice to inspect laundry facilities;
- A copy of an e-mail from the landlord to Tenant T.C. indicating that the tenants knew that they could live upstairs until September 01, 2018, and then the tenants could move downstairs; and

- A copy of a text message to one of the tenants advising them not to allow the occupants downstairs to move upstairs and for the tenants to stay upstairs until the landlord comes back.

The tenant testified that the co-tenants were supposed to move into the rental unit for August 01, 2018, but that there were occupants in the rental unit which prevented the tenants from being able to move in. The tenant submitted that three male tenants moved into the upstairs unit and that two female tenants did not move into the rental unit at all.

The tenant submitted that the co-tenants are seeking reimbursement for rent paid for the rental unit for August 2018, to recover double the security deposit as well as to recover the difference in rent paid for the tenants' current tenancy agreements in comparison to the tenancy agreement that was signed with the landlord for the rental unit. The tenant stated that they have had to pay increased rent due to the failure of the landlord to provide the rental unit as had been agreed.

The tenants also requested compensation for the laundry facilities which were supposed to be included as a part of the tenancy agreement but which they were not able to use in the upper unit due to a leak.

The landlord submitted that the tenants knew about the circumstances concerning the basement suite being occupied when they agreed to pay half the rent on July 24, 2018, and the remainder of the rent on July 31, 2018. The tenant testified that the tenants agreed to live in the upstairs unit, for which the landlord charges a higher rent, until the rental unit in the basement was ready for occupancy.

The landlord submitted that the two female tenants were traveling and did not intend to move into the rental unit until the middle of August 2018. The landlord stated that the rental unit was available when the two female tenants had returned from traveling.

The landlord stated that there is a laundry facility in a common area adjacent to the basement unit that the tenants had access to so there was no actual loss of any laundry facilities.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Having reviewed the evidence and testimony, I find that the tenants have not sufficiently demonstrated that they incurred a loss associated to the loss of laundry facilities under the Act. I find that the tenants have not provided any receipts for laundry completed somewhere other than the rental unit or any other type of documentary evidence to prove the actual amount required to be compensated for the loss of laundry facilities.

Section 16 of the Act states that 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.

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on a balance of probabilities, I accept the landlord's testimony that the tenants were aware of the tenancy circumstances prior to paying the second half of the rent on July 31, 2018, and taking possession of the upper unit at that time. I find there is no evidence that the tenants attempted to mitigate their losses by trying to sign a mutual agreement to end the tenancy prior to occupying the upper unit. I find there is no evidence that the tenants did not agree with the arrangements on July 31, 2018, when taking possession of the upper unit. I find that the tenants were aware that they would have to live in the upper unit until the basement suite (rental unit) was ready for occupancy.

I find that there is no evidence that the tenants made any attempt to mitigate the amount of rent being paid based on the circumstances. I find that there is no evidence provided to show the reduction in value of the tenancy agreement in consideration of the upper unit in comparison to the lower rental unit which would demonstrate a loss under the Act. I find that there is no evidence provided of a loss incurred by the tenants for alternate accommodations as three of the male tenants did actually take possession of the upper unit.

For the above reasons, I find that the tenants entered into a tenancy agreement with the landlord pursuant to section 16 of the Act and were obligated to pay the full amount of rent as agreed upon in the tenancy agreement pursuant to section 26 of the Act. I find that the tenants paid the landlord in full, while being fully aware of the living situation that they were then entering into on July 31, 2018, the date of the second rent payment. I find that there is nothing in the documentary evidence which demonstrates what was agreed upon, on July 31, 2018, when the tenants took possession of the upper unit, as to a new expected date of occupancy for the rental unit.

Section 45 of the Act establishes that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the agreement and is the day before the day in the month that rent is payable under the tenancy agreement.

Having reviewed the evidence, testimony and in consideration of the above, I find that the tenants ended the tenancy agreement of their own volition by providing notice on August 23, 2018, pursuant to section 45 of the Act. I find that the amounts being sought for the difference in rent amounts between the rental unit and the tenants' current accommodations are not losses being incurred due to a violation of the Act by the landlord as it is the tenants who gave notice to end this tenancy and enter into new tenancy agreements. I find that the occupants had vacated the rental unit in late August 2018 and that the rental unit was available for September 2018 if the tenants had chosen to continue the tenancy.

In consideration of the above, I find that the tenants have not satisfied the four elements required to determine a loss under the Act, regulations or tenancy agreement.

Therefore, the Application for compensation related to reimbursement of rent for August 2018, for loss of laundry facilities and for compensation for the difference in rent paid

between the rental unit and the new accommodations secured by the tenants from September 2018 to the duration of the fixed term lease for the rental unit is dismissed, without leave to reapply.

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant. I find that there is no evidence to show that the landlord had the tenants' agreement in writing to retain the security deposit.

If the landlord does not have the tenants' agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

I find that the landlord received the tenants' forwarding address, which was on the Application, on October 18, 2018. I find that there is no evidence that the landlord made any application for dispute resolution within 15 days of the end of the tenancy or 15 days after receiving the tenant's forwarding address on the Application to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

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.

Pursuant to sections 38(6) and 67 of the *Act*, I find that the tenants are entitled to a monetary award in the amount of \$3,000.00, comprised of double the security deposit (\$1,500.00 x 2).

As the tenants have been successful in the return of their security deposit, I allow their request to recover the filing fee in the amount of \$100.00.

The landlord may still file an application for damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$3,100.00, for double the security deposit and to recover the filing fee from the landlord.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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