



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VILLA SUPERIOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation.

The Tenants were present for the teleconference hearing, as well as an advocate (collectively the “Tenants”). An agent for the Landlord (the “Landlord”) was also present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Are the Tenants entitled to monetary compensation?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on March 11, 2018 for a rent amount of \$1,595.00, due on the first day of each month. A security deposit of \$200.00 was paid at the outset of the tenancy and has since been

returned. The Tenants moved out on October 31, 2018. The parties also agreed that a non-refundable cleaning fee of \$100.00 was paid at the outset of the tenancy.

The tenancy agreement was submitted into evidence. The agreement, signed on March 11, 2018, was for a fixed term from March 11, 2018 to April 30, 2018. The agreement states that the Tenants must vacate on the last day of the term.

The Tenants applied for compensation in the amount of \$905.00 which they stated was the amount they overpaid in rent along with the return of the \$100.00 cleaning fee.

The parties were in agreement as to the rent amounts paid by the Tenants throughout the tenancy. The Tenants paid a pro-rated amount for March 2018; \$1,595.00 for April, May and June 2018; \$1,895.00 for July and August 2018; \$1,795.00 for September 2018 and \$1,600.00 for October 2018. The Tenants also submitted rent receipts into evidence.

The Tenants provided testimony that although the rent was set at \$1,595.00, the Landlord would inform them by email as to the monthly rent amount due each month. They stated that the Landlord requested \$1,895.00 for July and August 2018 and \$1,795.00 for September and October 2018. The Tenants stated that they sought advice regarding the rent increases beginning in September 2018 and paid \$1,600.00 for October 2018, despite the Landlord requesting \$1,795.00.

The Landlord stated that the Tenants entered into a fixed term tenancy agreement set to end on April 30, 2018. However, she stated that the Tenants would ask to stay longer each month and therefore she would advise them of the monthly rates. The Landlord stated that the rental unit was in an apartment building and as this was a furnished apartment it was often rented for short-term rentals and \$1,895.00 was the seasonal rates for the summer months.

The Landlord stated that it was the Tenants who kept asking to stay for an additional month and could have provided notice at any time if they were not in agreement to the monthly rent amount.

The Tenants submitted their position that this was a tenancy under the *Act* and therefore should have continued on a month-to-month basis for the same monthly rent amount as listed in the tenancy agreement. They also stated that they were fearful of eviction so paid the amounts as requested by the Landlord.

Analysis

Upon review of the tenancy agreement submitted into evidence, I find that the parties entered into a fixed term tenancy for the period of March 11, 2018 to April 30, 2018. Although the tenancy agreement stated that the Tenants must vacate the rental unit at 11:00 am on the last day of the term, I do not find this to be an enforceable vacate clause.

Residential Tenancy Policy Guideline 30: Fixed Term Tenancies outlines the situations in which a tenant must vacate at the end of a fixed term agreement. I do not find that the parties in this matter had an enforceable vacate clause in accordance with the policy guideline. I also note that in order to be enforceable, the reason for the vacate clause must be noted on the tenancy agreement and initialled by both parties. A reason for ending the tenancy at the end of the fixed term was not included on the tenancy agreement and the vacate clause was not initialled.

Policy Guideline 30 further states the following:

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.

As I do not find any evidence before me that the parties entered into a new tenancy agreement after April 30, 2018, the terms of the original tenancy agreement remained in place.

I find that the parties entered into a standard tenancy agreement in which a rent amount was agreed upon, a security deposit was paid, and the Tenants had exclusive use of the rental unit during the tenancy. Therefore, I find that the *Act* applies to this matter in accordance with Section 2(1). I do not have any evidence before me that would indicate that this is a matter for which the *Act* does not apply.

I also refer to Section 43(1) of the *Act* which states the following regarding rent increases:

- 43 (1) A landlord may impose a rent increase only up to the amount
(a) calculated in accordance with the regulations,

- (b) ordered by the director on an application under subsection (3),
- or
- (c) agreed to by the tenant in writing.

I have no evidence before me that the Landlord provided legal rent increases in accordance with the *Act* and also note that the increased amount would not be in line with the annual allowable increase or within the specified timeframe. As such, I find that the Landlord requested additional monthly rent payments that was not done in accordance with the *Act*.

Therefore, I find that the Tenants have established that they are entitled to the return of the amounts they paid over the monthly rent amount of \$1,595.00 as stated on the tenancy agreement. I also note that a party claiming a loss has a duty to take reasonable steps to mitigate their losses. However, I accept the Tenants' testimony that they were fearful of an eviction and also unaware of their rights until September 2018 when they contacted an advocacy organization. I also note that after learning more about their rights, the Tenants paid \$1,600.00 for October 2018 instead of the amount of \$1,795.00 as requested, thus taking steps to minimize their losses.

As for the cleaning fee of \$100.00 paid by the Tenants at the start of the tenancy, I do not find any provision under the *Act* that would allow for this fee to be charged at the start of the tenancy and also note that this is not included as a fee under Section 7(1) of the *Regulation*. Instead, any actual cleaning costs incurred at the end of the tenancy could have been retained from the security deposit, in accordance with Section 38 of the *Act*.

Therefore, I find that the Landlord was not in compliance with the *Act* or *Regulation* when charging the Tenants a cleaning fee at the start of the tenancy. Accordingly, the Tenants are awarded the return of the \$100.00 fee.

Based on the rent amounts that both parties agreed were paid throughout the tenancy, I find that the Tenants are entitled to a Monetary Order in the following amount:

July 2018 overpayment	\$300.00
August 2018 overpayment	\$300.00
September 2018 overpayment	\$200.00
October 2018 overpayment	\$5.00
Return of cleaning fee	\$100.00
Total owing to Tenants	\$905.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$905.00** as outlined above. The Tenants are provided with this 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: April 03, 2019

Residential Tenancy Branch