



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes **FFL MNRL-S**

FFT MNSD

Introduction

This hearing dealt with applications by both the landlord and the tenant pursuant to the Residential Tenancy *Act* (“*Act*”).

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for unpaid rent and authorization to retain a security deposit pursuant to sections 67 and 38.

The tenant applied for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- A return of the security deposit pursuant to section 38.

The landlord attended the hearing represented by property manager RC (“landlord”). The tenant KW attended the hearing (“tenant”). Both parties acknowledge receiving each other’s notice of dispute resolution proceedings and evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- an order authorizing him to recover the filing fee for this application from the tenant?
- a monetary order for unpaid rent and authorization to retain a security deposit?

Is the tenant entitled to:

- an order authorizing her to recover the filing fee for this application from the landlord?
- recovery of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. This one year fixed term tenancy began on August 1, 2017, to be continued as another fixed term at the end of the one year term. Rent was set at \$1,550.00 to be paid on the first day of each month. A security deposit in the amount of \$775.00 was collected and is still being held by the landlord. A condition inspection report was completed at the commencement and conclusion of the tenancy.

The parties agree the tenants moved out of the rental unit on December 30, 2018 and conducted the condition inspection report on December 31, 2018. The tenants accept \$100.00 should be deducted from their security deposit for damages. The landlord filed for dispute resolution on January 10th and the tenant filed for dispute resolution on January 17th.

The landlord provided the following testimony. He is seeking recovery of rent for the month of January 2019 as he was not given proper notice of the tenant's intention to end the tenancy. The tenants gave notice for January 31, 2019 and not December 31st. The landlord has re-rented the unit as of February 1, 2019.

On December 15, 2018, the live-in property manager received the tenants' notice of intention to end tenancy by means of a handwritten Christmas card, provided as evidence. The card reads,

"Hi E(...) This is the letter and we will have moving trucks for January 30, 2019. If you can, book the elevator for me. Many thanks, S(...)". [names withheld for privacy]

The landlord testified the tenants previously provided the live-in property manager with a Notice of Intention to End Tenancy on November 30, 2018, indicating they would be moving out on January 31, 2019. While the landlord acknowledges it was received, they lost it when their business office relocated. The landlord recollects the effective date was January 31st and not December 31st.

To corroborate their position that the effective date of the Notice was January 31st, the landlord indicates they gave the live-in property manager vacation time at the end of December since there would be no move-outs scheduled for that time. The landlord did not call the live-in property manager as a witness in these proceedings.

The tenant provided the following testimony. On November 30, 2019, she drafted a Notice of Intention to End Tenancy ("Notice"), gave it to the co-tenant to co-sign and

slid it under the live-in property manager's door on that date. The Notice is dated, provides the address of the rental unit, effective (move-out) date of January 1, 2019 and requests a return of the security deposit. Unsigned spots for signatures of the tenants are indicated on the copy provided as evidence but were signed on the original Notice which was given to the landlord. No photographs were made of the original Notice.

The live-in manager and the landlord attended the rental unit and spoke with the co-tenant who confirmed the move-out date of December 31st. They came back the following day to show prospective tenants the rental unit.

The co-tenant, SW gave the live-in property manager Christmas gifts and a card on December 15th. The tenant acknowledges the co-tenant mistakenly put the wrong date for booking moving trucks and securing the elevator on the card however attributes the mistake to the advanced age of the co-tenant. Emails were sent back and forth between the parties regarding whether the move out date was December 31st or January 31st and were provided as evidence.

Analysis

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. The applicant must be successful in proving it is more likely than not the facts occurred as claimed.

The landlord must be able to prove on a balance of probabilities that the tenant's Notice was for January 31st and not December 31st.

The landlord did not dispute that he received the letter dated November 30th signed by both of the tenants which provides an effective (move-out) date. His argument is that the one given to him on November 30th is different from the one submitted as evidence by the tenant, claiming the tenant falsified evidence. He argued that this evidence was created after the dispute resolution proceedings began, however he does not have any evidence to corroborate this.

I find the lack of the original Notice, which the landlord admits was lost by his office, is detrimental to his argument. Without this evidence, the landlord cannot persuade me that his version of the events is the one to be believed, which is his burden.

The landlord's testimony that the live-in manager would have been denied vacation at the end of December I find to be inconclusive to his argument. It's just as likely that the company the live-in manager works for made an error in granting December vacation time due to the company's error after receiving the November 30th notice.

The landlord relies on the Christmas card from the co-tenant as proof that January 31st was given as the effective date.

Section 52 of the *Act* states:

In order to be effective, a notice to end a tenancy must be in writing and must

- a) be signed and dated by the landlord or tenant giving the notice,
- b) give the address of the rental unit,
- c) state the effective date of the notice,
- d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- e) when given by a landlord, be in the approved form.

I am not satisfied the Christmas card is proper Notice to end tenancy, as it does not comply with section 52 of the *Act*. While the Christmas card seeks to reserve the elevator and advises that moving trucks have been booked, the card does not contain any elements of a proper Notice. I accept the tenant's testimony that it was written by an elderly tenant who got the dates wrong on a Christmas card.

I accept the tenant's testimony that the Notice presented as evidence is a reproduction of the original one received by the landlord on November 30th. I accept that the signed original was provided to the landlord who has since lost it.

I find that the landlord has failed to prove on a balance of probabilities that the tenants provided him with an effective (move-out) date of January 31, 2019. I am satisfied the effective date provided on the Notice is December 31, 2018. As the tenants have provided sufficient Notice to End the Tenancy in accordance with section 52, the tenants are not liable to compensate the landlord for unpaid rent pursuant to section 67 of the *Act* and I dismiss the landlord's claim.

The landlord continues to hold the tenants' security deposit in the amount of \$775.00. The tenants agree that \$100.00 of it can be deducted from it for damages done to the rental unit. I issue a monetary order in the tenants' favour in the amount of \$675.00.

As the tenants' application was successful, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$775.00**.

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: May 08, 2019

Residential Tenancy Branch