



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for a monetary order for compensation pursuant to section 67.

The tenant attended the hearing ("applicant/tenant"); the landlords attended the hearing, represented by their agent, CK ("landlord"). The landlord confirmed receipt of the tenant's application for dispute resolution and evidence; the tenant confirmed receipt of the landlord's 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*.

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the tenant entitled to a return of the portion of rent she paid beyond the date the tenancy ended? Is she entitled to a return of the security deposit?

Background and Evidence

A copy of the tenancy agreement was entered into evidence. The fixed, one year tenancy began on November 1, 2018 with a vacate date of November 1, 2019. Parties to the tenancy agreement are the named landlords, the applicant/tenant and another tenant, not named in these proceedings ("tenant 2"). Rent was set at \$1,450.00 per month, and the parties agreed each of the tenants pay their half the rent (\$725.00) separately.

A security deposit in the amount of \$362.50 was collected from the applicant/tenant and is still being held by the landlord. Tenant 2's portion of the security deposit was already returned to her.

A condition inspection report was not completed at the commencement of the tenancy.

The applicant/tenant provided the following testimony. The two tenants began to have difficulties living together prompting the applicant/tenant to move out. On March 24, 2019, the applicant/tenant gave the landlord written notice to end the tenancy prior to the end of the fixed term ("Notice"). A copy of the Notice dated March 22, with an effective date of March 31, 2019 was provided as evidence. The applicant/tenant gave the landlord her portion of the rent for April 2019 in the amount of \$725.00 and provided her forwarding address in the letter.

The landlord provided the following testimony. When they received the Notice from the applicant/tenant on March 24, 2019, they advised her that the *Act* requires her to pay a full month's rent (April 2019 rent) for ending the tenancy early and that they may seek the following month's rent (May 2019 rent) if another tenant couldn't be found. They acknowledge receiving the applicant/tenant's \$750.00 portion of the April rent. After March 31, 2019 the landlord installed a new deadbolt on the rental unit door at the request of the remaining tenant. The key entry to the unit has not been changed and the applicant/tenant still has a key which she has not returned. The landlord has a new tenancy for the beginning of May with the new tenants moving in on May 3, 2019.

Tenant 2, AC was called as a witness. She testified she also ended the tenancy with the landlords some time after the applicant/tenant did so. Tenant 2 also paid her portion of the April 2019 rent in the amount of \$725.00. The new deadbolt lock was installed on the door to the rental unit after the applicant/tenant moved out however there was one instance where she let the applicant/tenant into the unit after March 31 to retrieve belongings. Tenant 2 wanted the lock installed to prevent the applicant/tenant from coming into the rental unit after she had moved out since the applicant/tenant still had a key to the front door.

Analysis

- Compensation for April rent

Section 45(2) describes how a tenant may end a fixed term tenancy.

A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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

The tenant provided the landlord her written notice to end the fixed term tenancy on March 24, 2019 terminating the tenancy agreement in seven days. Although the tenant served the landlord in accordance with section 45(2) of the *Act*, the effective date to terminate the tenancy was contrary to provisions of the *Act*, with less than one full month's notice. The tenant is liable for rent in April. I dismiss the tenant's application to be compensated for her portion of the rent she paid for April without leave to reapply.

- Return of security deposit

The landlord received the tenant's forwarding address on March 24, 2019. Per section 38(1) of the *Act*, the landlord was required to return the security deposit or file for dispute resolution to retain the security deposit within 15 days after the later of: the date the tenancy ends or the date the landlord received the tenant's forwarding address. The landlords did not dispute failing to return the tenant's deposit by April 15, 2019, or 15 days after the tenancy ended.

Pursuant to Section 38(6) I am required to double the value of the tenant's deposit due to the landlord's failure to comply with section 38(1). I award the tenant the return of double the value of her security deposit in the amount of \$725.00.

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

Conclusion

I order that the tenant is entitled to a monetary order in the sum of \$825.00. I order that the landlord(s) pay this sum forthwith.

The tenant is provided with an 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, it 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: May 06, 2019

Residential Tenancy Branch