



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 05, 2019 (the “Application”). The Landlord sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$3,200.00 for August rent.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, a co-landlord and the Tenants in relation to the rental unit. The tenancy started November 15, 2011 and was for a fixed term ending November 14, 2012. The tenancy then became a month-to-month tenancy. Rent was \$2,000.00 per month due on the first day of each month.

The parties agreed the security deposit has been dealt with.

The Landlord testified as follows. A Two Month Notice to End Tenancy for Landlord's Use of Property dated June 28, 2018 (the "Notice") was served on the Tenants June 28, 2018. The Notice was submitted as evidence. It has an effective date of August 31, 2018. The Tenants found a new place and were going to move at the end of July. He told the Tenants through June and July that they needed to give written notice to end the tenancy earlier than August 31, 2018. The Tenants never provided written notice ending the tenancy early and therefore it did not end until August 31, 2018. The Tenants received July rent free pursuant to the Notice and did not pay for August. The Tenants vacated the rental unit by August 01, 2018.

The Tenants testified as follows. The Landlord came to them June 4, 2018 saying he needed to move back into the rental unit and they needed to vacate. He asked that they move as soon as possible. The Tenants tried to find a place as soon as possible and did find a place June 25, 2018. They let the Landlord know they found a place. The Landlord told them they needed to give notice ending the tenancy. They were confused because it was the Landlord who wanted to end the tenancy, not them. The Landlord did serve them with the Notice June 28, 2018. The Landlord knew they were vacating early and there could have been no confusion about this. They had a good rapport with the Landlord at that point.

The Tenants testified that they told the Landlord via text that they were vacating early. The Tenants acknowledged that they did not provide written notice ending the tenancy early. The Tenants agreed the Landlord asked for written notice ending the tenancy early on July 22, 2018. The Tenants testified that they were busy at that point and overlooked the technicality of providing written notice.

The Tenants testified that the Landlord moved into the rental unit August 01, 2018 and therefore did not suffer any loss.

I asked the Tenants to point to what section of the *Act* they were relying on to support their position. The Tenants were unable to do so.

Tenant B.M. further testified as follows. The Tenants were always on good terms with the Landlord. At the end of the tenancy, the Landlord filed an Application for Dispute Resolution claiming for damages. The Landlord was unsuccessful and had to return double the security deposit. It was only after this that the Landlord filed the Application.

Given there was a prior Application for Dispute Resolution filed by the Landlord after the tenancy seeking monetary compensation, I told the parties that I would consider whether the Landlord was splitting his claim and heard the parties on this issue.

In reply, the Landlord testified that he asked the Tenants for written notice ending the tenancy early June 25th and 26th and in July. The Landlord testified that he moved his stuff into the rental unit during August. He later agreed with the Tenants that he used the rental unit in August.

I summarised the timeline of events as follows. The Landlord told the Tenants verbally that they needed to vacate as he wanted to move into the rental unit. The Tenants started looking for a new place and found one. The Tenants were then served with the Notice. The Tenants vacated August 01, 2018. Both parties agreed this was accurate.

There is an email in evidence showing the Landlord asked for written notice to end the tenancy early from the Tenants June 26, 2018. The email specifically points out to the Tenants that they will be responsible for August rent in the absence of written notice.

The Tenants submitted a note dated August 08, 2018 stating:

This is to notify you our last day of tenancy was July 31 18...

The Landlord states that this note was left in the mailbox August 11, 2018.

There are messages in evidence showing the Landlord asked for a written notice ending the tenancy early on July 22, 2018.

Analysis

I have considered that the Landlord previously filed a claim for monetary compensation against the Tenants and did not seek rent for August. I am satisfied the Landlord is not splitting his claim given the first claim related to damage to the rental unit and this claim relates to unpaid rent.

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no issue that the Tenants were served with the Notice June 28, 2018.

Section 50 of the *Act* states:

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49...the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

[emphasis added]

I find that the Tenants did not give written notice to end the tenancy prior to the August 08, 2018 note.

However, I find the note dated August 08, 2018 sufficient to end the tenancy pursuant to section 50 of the *Act*. Section 50 of the *Act* only requires that the notice be in writing. This section does not require that the notice comply with section 52 of the *Act*. I find this to be significant as all other sections relating to notices to end tenancy specifically state that the notice must comply with section 52 of the *Act* in form and content. Given the absence of this requirement in section 50 of the *Act*, I do not find that a notice under this section must comply with section 52 of the *Act*. The note dated August 08, 2018 is written notice. It is dated. It provides the Tenants names. It states the end date of the tenancy. I find this note sufficient to end the tenancy early.

I accept the evidence of the Landlord that he received the August 08, 2018 note in the mailbox August 11, 2018. In their written materials, the Tenants state the note was dropped off August 08, 2018. Given I accept the note was in the mailbox, the Landlord is deemed to have received it August 11, 2018 pursuant to section 90(d) of the *Act* even if it was dropped off August 08, 2018.

The August 08, 2018 note purported to end the tenancy July 31, 2018. Section 53 of the *Act* states:

53 (1) If a...tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The Tenants were required to give 10 days notice ending the tenancy early pursuant to section 50 of the *Act*. The 10 days starts from when the Landlord received the note. Therefore, the effective date of the note was August 21, 2018. The tenancy did not end until this date. The Tenants are responsible for paying rent up until this date.

It is irrelevant that the Landlord knew the Tenants were vacating early. The Tenants were required to give written notice to end the tenancy. The Tenants are expected to know their obligations in this regard. Further, this is specifically noted on page two of the Notice. As well, the Landlord specifically asked the Tenants for written notice.

I find the Tenants breached the *Act* by ending the tenancy early without proper notice. I find the Landlord did suffer loss as he lost rent for August that he otherwise would have received and is entitled to receive. I do not find this to be a situation where the Landlord had to take steps to minimize his loss although I note that the Landlord asked the Tenants at least twice for written notice ending the tenancy early.

I did not understand there to be an issue that rent at the end of the tenancy was \$3,200.00. I find the Tenants owe the Landlord for 21 days of rent which equals \$2,167.74.

Given the Landlord was partially successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$2,267.74 and I issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$2,267.74 and is issued a Monetary Order in this amount. This Order must be served on the Tenants. If the Tenants 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 *Act*.

Dated: July 03, 2019

Residential Tenancy Branch