



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses.

Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties had a fixed term tenancy with a stated ending date of June 20, 2019. The monthly rent was \$1,300.00 per month.

The tenants sent a written move-out notice to the landlord by email on November 28, 2018 stating that they are ending the tenancy because the city had advised them that the suite was illegal and because of problems with the rental unit.

The landlord sent an email response the same date stating:

I accept your 3-day notice to move out on December 1, 2018 as I have always advised you to move out any time you were not comfortable and happy living at the coach house.

...

Also, as have always mentioned I am willing to prorate your rent as of your move-out date regardless of how short of a notice you gave me...

The landlord claimed that she later spoke with the city and the city advised her that they did not tell the tenants that they could not live at the rental unit as the tenants had claimed. The landlord claimed \$1,300.00 for damages for unpaid rent in December 2018.

The landlord also claimed reimbursement for utility expenses. The landlord acknowledged that the tenants paid the utility expenses pursuant to the tenancy agreement during the tenancy. However, the landlord presented utility statements relating to the time period after the termination of the tenancy and the landlord claimed \$1,049.00 for reimbursement of electric utility expenses.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;

2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this matter, the landlord sought monetary compensation from the tenant for breaching the agreement and providing inadequate notice of termination of the tenancy agreement. Section 44(1)(c) of the *Act* states that a tenancy agreement can be ended by the written agreement of the landlord and tenant. In this matter, I find that the landlord and tenant did enter a written agreement on November 28, 2018 to terminate the tenancy agreement. I find that tenants expressly stated that they wanted to end the tenancy and the landlord expressly agreed to the termination. I find that the landlord even expressly agreed to waive any claims for compensation for inadequate notice.

The landlord argued that her agreement to end the tenancy agreement was vitiated because she claims that the tenants mislead her about the city's position. However, the landlord has not provided a sufficient basis as to why an alleged misstatement from the city or the tenants should set aside a written agreement to end the tenancy pursuant to section 44(1)(c) of the *Act*.

For the forgoing reasons, I find that the parties have mutually agreed in writing to terminate this tenancy agreement pursuant to section 44(1)(c) of the *Act*. As such, I find that the landlord has failed to provide sufficient evidence to establish that the tenants breached the *Act* by providing inadequate notice of the termination of the tenancy and I dismiss this claim.

Furthermore, I find that the landlord has not provided sufficient evidence to establish that the tenants owe any monies for the reimbursement of utilities. The landlord has not sufficient provided evidence showing an obligation of the tenants to pay any outstanding utility payments during the tenancy. As such, I deny this claim.

Since the landlord has not prevailed in this matter, I dismiss her application for reimbursement of the filing fee.

Conclusion

The landlord's application is dismissed.

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: October 27, 2019

Residential Tenancy Branch