



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”), regulations or tenancy agreement and for an order requiring the landlords to return their security deposit.

The tenants and the landlords appeared and the hearing process was explained to the parties. The parties then gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules (“RTB”) Rules of Procedure (the “Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issues-

The landlord, SD, said that he had not received the tenants’ evidence, except through the on-line portal, of which he was not sure he had all access.

Additionally, the tenants submitted that they had not received the landlords’ evidence. Upon my inquiry, the landlord said that he sent their evidence to the tenants at the address listed in their application. The tenant said that they had not lived at that address for six weeks; however, she said the landlord knew of the change through text messages.

I do not find that the tenants provided sufficient, specific information of how or when they served the landlords with their evidence. As a result, I have excluded their documentary evidence and allowed their testimony instead. I find that with all the evidence submitted it was not necessary for me to consider the tenants' written evidence.

I also find that the landlords submitted sufficient evidence that they served the tenants with their evidence at the only address provided, the one listed in the tenants' application. I have therefore accepted their evidence as properly served.

Issue(s) to be Decided

Have the landlords breached the Act or tenancy agreement, entitling the tenants to a monetary order for money owed or compensation for damage or loss?

Are the tenants entitled to an order requiring the landlords to return their security deposit?

Are the tenants entitled to recover their filing fee?

Background and Evidence

The tenant, LM, submitted that she and the landlords agreed that they would rent the landlords' rental unit, beginning on July 1, 2019, for a monthly rent of either \$2,000.00 or \$2,100.00, and a security deposit of \$1,000.00.

The tenant submitted that she paid the landlords \$1,200.00 for a partial rent payment and \$500.00 for a partial security deposit.

The tenant submitted that she ultimately "bailed" on the tenancy and they never moved into the rental unit. The tenant submitted that she refused to move-in, as the landlords had not cut the yard, the pool in the backyard was full of mosquito larvae, and there were no locks on the door.

The tenant submitted further that when she met the landlord at the home, he said he would paint, but that he never re-painted the rental unit. In general, the tenant submitted that the landlord never did any of the work he promised to do.

The tenant said the landlord asked for two weeks to make the repairs, after the last tenants moved out on June 20, 2019.

The tenant submitted that she could not move into the rental unit due to the condition it was in. When she asked the landlord for her money back, he refused. The tenant submitted that she was entitled to the partial rent and security deposit as the rental unit was not in the condition as promised.

Landlords' response-

The landlord submitted that the parties made a verbal tenancy agreement, for a monthly rent of \$2,000.00 and a security deposit of \$1,000.00 for a tenancy to begin on July 1, 2019.

The landlord submitted that the tenant wanted to do the yard work, to paint the house, and to clean the pool.

As to the pool, the landlord submitted that he tells every potential tenant that he does not clean out the pool, a cleaned-out pool is not part of the tenancy agreement, and the pool comes "as-is". When he explains this to potential tenants, some accept it and some walk away. The landlord asserted that the pool was in that same condition when the tenants agreed to the tenancy and paid the partial rent and security deposit.

The landlord submitted that ultimately the tenant informed him she did not want to cut the grass or do any of the other work. The landlord submitted that when the tenant informed him of this, he would do the work himself. The landlord submitted that the tenant said she was not going to move into the rental unit on July 1, 2019, due to her husband being away and to the Canada Day long weekend. The landlord said they agreed that he could start and finish the work during the first couple of days of July, as they were not moving in until later.

The landlord submitted that a few days later, the tenant informed him they would not move in. The landlord asserted that the rental unit was habitable and in fit condition, as shown by a new tenant moving in on July 22, 2019, after one tenant vacated at the end of June 2019.

The landlord submitted that he only changed the locks on July 2, 2019, after the tenant said that he should watch the house. The landlord submitted that a month ago, the tenant asked him about renting the rental unit.

The landlord referred to his evidence, which was a series of SMS messages, showing the text messages between him and the tenant, LM. The text messages show that the tenant was going to perform work around the house, such as lawn cutting and cleaning out the pool.

Analysis

Based on the oral and written evidence and a balance of probabilities, I find as follows:

Return of partial rent-

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the evidence is clear that the landlords and the tenants entered into a tenancy agreement, for a monthly rent of \$2,000.00 as shown by the receipt provided by the landlord, and a security deposit of \$1,000.00. I find this is demonstrated by the tenant paying a partial rent of \$1,200.00 on June 30, 2019, and a partial security deposit of \$500.00, on June 16, 2019. I find the evidence is clear the tenancy was to begin on July 1, 2019. What is not clear is whether the tenancy was for a fixed term or a month-to-month tenancy.

Absent evidence to the contrary, I find the tenancy was on a month-to-month basis.

Residential Tenancy Branch Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law.

If the tenants believed the rental unit was not repaired or in a state as agreed upon, their remedy was to file an application for dispute resolution seeking orders for the landlords' compliance with the Act.

The evidence is that the tenants notified the landlord on the day the tenancy was to begin that they were not moving in.

Under section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord a written notice that is not earlier than a month after the landlord receives the notice and is the day before the day of the month that rent is payable.

What that means, in this case, as the tenancy was to start on July 1, 2019, the tenant could have only legally ended the tenancy by that date by providing written notice no later than May 31, 2019. As the parties did not enter into the tenancy agreement until June 16, 2019, when the tenants paid the security deposit, the tenants were obligated to the landlord for monthly rent beginning July 1, 2019.

As I find the tenants were responsible for monthly rent for July 2019, I dismiss their claim for the partial rent they paid for July 2019, of \$1,200.00. Although the landlord re-rented the rental unit for July 22, 2019, I do not find he should be required to pay back any part of the \$1,200.00, as the prorated rent for July 1-21, 2019, owed by the tenants would be \$1,380.75 ($\$2,000.00 \times 12 \text{ months} = \$24,000.00$ yearly rent $\div 365 \text{ days} = \65.75 daily rate $\times 21 \text{ days, July 1-21,} = \$1,380.75$).

Return of a partial security deposit-

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

In this case, I find the tenants submitted insufficient evidence that they provided their written forwarding address to the landlords after they ended the tenancy. Conversely, I find the landlord submitted sufficient evidence by way of the SMS's that he requested the tenants' address, but it was not given.

While the tenant submitted that she notified the landlord of their address through texts, Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, must be given or served in the ways listed in this section of the Act.

Text message communication is not an approved method of delivery of those documents under the Act.

The tenants should have served their forwarding address in writing to the landlord in accordance with the Act and allow the landlords the applicable timeline under section 38 of the Act, which is fifteen days, to either return their security deposit in full or file an application claiming towards the security deposit.

I therefore find that the tenants' application is premature, due to the fact that the tenants could not confirm they provided their written forwarding address in writing to the landlord in a way required by section 88 of the Act.

I therefore dismiss this portion of the tenants' application, with leave to reapply.

As I have dismissed the tenants' claim for a return of a partial rent payment of \$1,200.00, without leave to reapply, and their claim for a return of a partial security deposit, with leave to reapply, I decline to award them recovery of their filing fee.

Conclusion

The portion of the tenants' application for \$1,200.00 for a partial rent payment is dismissed without leave to reapply. The portion of the tenants' application for a return of their partial security deposit of \$500.00 is dismissed with leave to reapply.

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 16, 2019

Residential Tenancy Branch