



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on October 25, 2019, at 9:30 am. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenants' application package and evidence. The Tenants confirmed receipt of the Landlords' evidence packages and neither party took issue with the service of any of these packages.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties agree that the Tenants have already moved out, and did so on or before September 15, 2019. As such, I find most of the Tenants' application is now moot, as the tenancy is over. The only ground remaining is the Tenants' application for monetary compensation, which will be addressed further below.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on December 1, 2015, and ended on September 15, 2019, the day the Tenants gave their formal Notice and officially left the rental unit. The parties agree that there was no tenancy agreement signed, as one of the Tenants is the daughter of the Landlords. The Tenants stated they paid a security deposit of \$400.00 and a pet deposit of \$400.00 in cash at the time they moved in but they provided no evidence to support that this was paid. The Landlords deny getting any deposits. The parties agree that monthly rent is \$850.00 and is due on the first of the month.

The Tenants stated they received a 2-Month Notice to end Tenancy from the Landlords on August 9, 2019, and it had an effective date of October 31, 2019. The Tenants provided, and the Landlords received (on August 31, 2019), a 10 Day Notice that the Tenants were going to move out early (on September 15, 2019). The parties agree that the Tenants paid rent for August, but did not pay any rent for September.

The Tenants are seeking the return of their security and pet deposit, totalling \$800.00, plus interest. Additionally, the Tenants are seeking \$425 (half months' rent), so that they receive the 1 month's compensation they are due under section 51 from receiving the 2 Month Notice.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenants stated they paid a security and pet deposit. However, they have provided insufficient evidence to substantiate that this was paid. The Landlords directly refute that this was paid. I find the Tenants have not met the burden of proof for this portion of their application. As such, I dismiss the Tenants' application for the return of their deposits, plus interest, without leave to reapply.

With respect to their application for half months' rent, in the amount of \$425.00, I note that the Tenants provided 10 days' notice that they were going to vacate early, following receipt of the 2 Month Notice. Ultimately, the Tenants left the unit effective September 15, 2019, after providing their 10 Day Notice that they would terminate the tenancy early. I find the Tenants gave proper Notice that they would terminate the tenancy early, and I find they legally ended the tenancy on September 15, 2019. I find the evidence sufficiently establishes that the Landlord was in receipt of the 10 Day Notice from the Tenants on August 31, 2019.

I note the 2-Month Notice states that the Tenants may end the tenancy sooner than the date set out in this Notice as long as they give the landlord at least 10 days' written notice and pay the proportion of rent due to the effective date of that notice. Ending the tenancy early does not affect the Tenant's right to the one month compensation above.

I note the Tenants paid rent for August 2019, and did not pay September 2019 rent. As such, I find the Tenants have only received half a months' rent, and are still due the

remaining \$425.00, which represents the second half of the compensation they are due under section 51 of the Act (to refund the last half of August 2019 rent).

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were partly successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issue a monetary order for the Tenants in the amount of \$525.00

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$525.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: October 25, 2019

Residential Tenancy Branch