



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIR REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, regulations and tenancy agreement and to recover the filing fee for this application.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 8, 2019. The Landlord confirmed receiving the Tenants’ hearing package on August 8, 2019. Based on the evidence of the Tenants and the Landlord, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenants?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy was to start on July 1, 2019 as a one year fixed term tenancy. The Tenants changed their mind and did not move into the rental unit. Rent was to be \$1,600.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$800.00 and a pet deposit of \$800.00 both on June 29, 2019. The Landlord returned the security and pet deposits on July 13, 2019. A move in condition inspection report was completed and signed by both the Landlord and Tenants on June 29, 2019.

The Tenants said the rental unit was in very poor condition when they viewed it on June 29, 2019, but as rentals are in high demand the Tenants gave the Landlord a security deposit of \$800.00 and a pet deposit of \$800.00 to hold the unit. As well the Tenants said they signed a one year fixed term tenancy agreement and there was a move in

condition inspection completed. The Tenants said they felt they were pressured to complete and sign both documents.

The Tenants continued to say they went through the rental unit again and found it was in worse condition than they thought and the tenants in the basement unit smoked. The Tenants understood this was a no smoking rental unit. As well the Tenants spoke with the other tenants in the unit and discovered the hydro costs were to be a split bill. The Tenants said the Landlord did not make them aware of this at the time of signing the tenancy agreement. The Tenants submitted a number of photographs to support the poor condition of the rental unit. The Tenants said for these reasons they changed their minds about the rental unit and they did not move in. Now the Tenants are requesting that the July 2019 rent in the amount of \$1,600.00 be returned to them as they did not move into the rental unit.

The Landlord's Counsel said the Tenants entered into a one year fixed term tenancy agreement or contract with the Landlord and they are obligated to the terms in that contract. As well Counsel said the Tenants completed a move in condition inspection report which indicates the repairs needed to the unit. The Tenants agreed to the report and signed it. The Landlord's Counsel continued to say the Landlord hired repair people and started completing the repairs in the first week of July 2019. Counsel said the Landlord was complying with the move in condition inspection report repair work. Consequently, the Landlord's Counsel said the Landlords met their obligations under the contract, but the Tenants did not by not meet their responsibilities when they did not move into the unit. The Landlord's Counsel said the Landlords are entitled to the July 2019 rent of \$1,600.00 as the Tenants did not give the Landlord proper written notice to end the tenancy.

The Landlord's Counsel said in closing that the Landlord is entitled to the July 2019 rent of \$1,600.00 because proper notice to end the tenancy was not given by the Tenants and the Tenants are bound by the tenancy agreement.

The Tenants said in closing they are new to renting and they feel they were pressured to sign documents by the Landlord. The Tenants continued to say they understand they need to read and understand documents before signing them.

Analysis

Start of rights and obligations under tenancy agreement

Section 16 of the Act says: 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.**

The Landlord and Tenants signed the tenancy agreement on June 29, 2019 as well as a move in condition inspection report on the same day. Consequently both parties are obligated under the tenancy agreement or tenancy contract to abide by the terms in the contract. The tenancy agreement was a fixed term agreement for one year and the Act is very specific on how to end a fixed term tenancy. The Tenants changing their minds and decided not to move into the rental unit. This is not a recognized method to end a fixed term tenancy. Section 45 (2) says a tenant can end a fixed term tenancy not earlier than the expiry date of the agreement or in writing with the Landlord's agreement. Further it is a requirement of ending a fixed term tenancy to provide 1 full months notice in writing to the Landlord. Consequently, if the Tenants had the Landlord's agreement to end the tenancy the Tenants would have to provide one month written notice to end the tenancy. If the Tenants gave written notice on June 29, 2019 it would be effective for July 31, 2019. As a result the Tenants are responsible for the July 2019 rent of \$1,600.00. I find the Tenants have not established grounds to recover the rent of \$1,600.00 that they paid for July 2019 for the rental unit. I dismiss the Tenant's application without leave to reapply.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the application fee or \$100.00 that they have already paid.

Conclusion

The Tenants application is dismissed without 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: November 19, 2019

Residential Tenancy Branch