Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act in the amount of $2,700.00, and to recover the $100.00 cost of their Application filing fee.

The Tenant, M.M., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, E.G. and K.B., for the Landlord were also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said she sent the Landlord two registered mail packages with the Application and Notice of Hearing documents and with documentary evidence. She provided Canada Post registered mail tracking numbers for the packages. The Landlord said that she only received one registered mail package; however, when I tracked the registered mail packages with Canada Post, both were described as having been delivered. I find, therefore, that the Tenants Application, Notice of Hearing and documentary evidence was served to the Landlord, pursuant to the Act.

The Landlord said she sent her documentary evidence to the Tenants on March 5, 2020. The Tenant confirmed receipt of the Landlord's package. I am satisfied that the Parties were served with each other's documents in sufficient time for them to review the other Parties' submissions before the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2019, with a monthly rent of $1,300.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $600.00, and no pet damage deposit.

The Parties agreed that the Tenants vacated the rental unit on October 31, 2019. They agreed that the Tenants provided the Landlord with their forwarding address in an email dated October 31, 2019.

The following chart sets out the Tenants' claim:

	Claiming	Amount
1	October 2019 rent	$1,300.00
2	November 2019 rent	$1,300.00
3	Double security deposit	$1,200.00
4	Filing fee	$100.00
	Total monetary order claim	$3,900.00

In the hearing, the Tenant said:

> We are seeking reimbursement for October rent, to compensate us for being asked to vacate, because we were under the impression, we would have a fireplace. We were away for most of October. We felt we were rented the unit under false pretenses. The second $1300.00, was because there was no

> resolution and we were given one month to leave. Not the two months' legal minimum. And $1200.00 for the security deposit because it was not returned within 15 days. And then and to recover the $100.00 cost of our filing fee.

The Landlord made a written submission, most of which I have set out below, because it summarizes much of the testimony in the hearing and sets out the chain of events that occurred between the Parties.

> I am an 83 year old first-time landlord. I honestly never meant to cause confusion or to end up in a situation such as this. My sole intention was to rent my home to this wonderful couple while I explored the option of living in an assisted living facility. I am on a limited pension and attempted to work out a mutually agreeable solution after the fireplace was deemed un-useable.
>
> **. . .**
>
> I decided to rent my home and determined to have it rented for October 1. At this time, I also decided to put the home up for sale. I scheduled a cleaning and inspection of the fireplace, to ensure all was safe for any tenant. However, I also posted an advertisement for rent.
>
> [The Tenants] viewed my home in mid-September and completed an application for rent starting October 1, 2019. At this time, they were informed that the home was up for sale as well, and that the fireplace would soon be cleaned and inspected. As part of the negotiation, they were also aware that they would be responsible to pay for all power to the home. They paid a $600 damage deposit and wrote 5 pre-dated cheques for rent. I cashed the deposit cheque at that time and the first month rent cheque (October) at the start of October. [The Tenants] moved in near the end of September 2019 (approx.. the 27th), and brought some belongings to leave at the house.
>
> They did not transfer utilities into their names at that time (or ever).
> [The Tenants] then went on an extended holiday. They returned approx. October 27th, 2019. The fireplace inspection and cleaning took place on Oct 6, 2019. To my shock and dismay, the inspector stated the fireplace was un-useable. As such, I informed the tenants (via telephone) that we needed to meet to discuss the issue with the fireplace.
>
> The main heating source for the home are baseboard heaters, powered by electricity. The fireplace is an auxiliary heating source, not large enough to heat the entire unit, and is very limited in directing heat to the entire home.

. . .

Their main issue was how much more the power bill would increase due to no fireplace. I typically paid around $180 per month for electricity for 1 person. I checked with both neighbours; the neighbour on the other side of the duplex paid approximately $200 per month for electricity, and did not use their fireplace. The other neighbour next door has no fireplace, and pays approximately $225 per month for electricity. Even though the fireplace should not be considered a source of heat for the home, in an effort to be fair, I offered to reduce the rent by $200 a month. This offer was not accepted. They offered to pay $1,400 a month but that I would be responsible for the electrical costs. Seeing that I have no control over their electrical consumption, and that I am on a limited budget, I declined that offer.

We were not making any headway in negotiating a workable solution, so I suggested several options:

Free rent for November while they looked for a more suitable dwelling.
They could pay utilities for October and November and have November free.
Or they could give notice and leave the premise by November 30.

Please note, I was not ‘kicking them out’ but rather offering a way for them to break the lease without the need for arbitration.

Honestly, I was trying to be as fair as possible with these ladies.

I did not receive a 30 day notice that they were planning to vacate the premise, so I was unable to offer the place up for rent to anyone else for November. I received an email from [M.M.] on Oct 31, indicating they had moved out of the premise, and wanted their damage deposit back.

Henceforth, I am hoping to keep October’s rent ($1,300), as they had occupied the space for that month. I am also hoping to keep the $600 damage deposit as partial payment for November rent that I lost out on. Lastly, I am hoping to be awarded $700 for the portion of November’s rent, $200 for October utilities, and $200 for November utilities.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on the balance of probabilities, I find the following:

RTB Policy Guideline 8 (PG #8) states:

> **Material Terms**
>
> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
>
> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
>
> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The Tenants did not point to a clause in the tenancy agreement which states that the rental unit includes a fireplace. I find that the undisputed evidence before me is that the Parties had discussed the fireplace before the start of the tenancy, and that the Landlord agreed to have it cleaned and inspected. However, I find that the inspection indicated that the fireplace was not operational, and the Landlord determined that it would be financially infeasible to have it repaired, if that was even possible.

I find that the Tenants did not provide sufficient evidence to indicate that the fireplace was a material term to the tenancy agreement. There was no reference to the fireplace in the tenancy agreement. There was discussion between the Parties of the existence of the fireplace and that the Landlord would have it cleaned and inspected; however, the Tenants did not take the steps set out above to inform the Landlord in writing that they believed this was a material term of the tenancy agreement. Based on the evidence before me, overall, I find that the fireplace was not a material term in the tenancy agreement.

I find that the Landlord provided the Tenants with options of moving forward with the tenancy, or ending the tenancy, as they so chose. The Tenants made a counter proposal that the Landlord did not accept. I find that before the Parties could come to a mutually acceptable arrangement, the Tenants moved out without any advance notice to the Landlord. I find that the Tenants did not give the Landlord sufficient notice to end the tenancy; however, that is not a matter that is before me, as the Landlord did not apply for RTB dispute resolution to make a claim against the Tenants. Accordingly, I cannot address the Landlord’s claims for compensation in this proceeding.

The evidence before me is that the Tenants moved their belongings into the rental unit in early October 2019, in order to begin their tenancy there. They may have been away from the rental unit for a few weeks in October; however, they had moved in prior to going away and this was consistent with the terms of the tenancy agreement. I find that the Tenants provided insufficient evidence and arguments to meet their burden of proof in their claim to be refunded the October 2019 rent, so I dismiss this claim without leave to reapply.

In terms of the Tenants’ claim for compensation for November 2019, I find that the Tenants did not provide sufficient bases on which to make this claim. I find that the Parties had not come to an agreement as to how the tenancy would progress or end, as their respective proposals were rejected by the other Party. I find that the Tenants provided insufficient evidence to meet their burden of proof for their claim for November 2019 rent; therefore, I dismiss this claim without leave to reapply.

Regarding the security deposit, section 38 of the Act sets out tenants' and landlords' rights and responsibilities regarding security and pet damage deposits. I find that the Tenants provided their forwarding address to the Landlord on October 31, 2019, and that the tenancy ended on October 31, 2019. Section 38(1) of the Act states the following:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $600.00 security deposit within fifteen days after October 31, 2019, namely by November 15, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that she returned any amount or applied for dispute resolution to claim against the deposit. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Section 38(6) states:

> 38 (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenants double the amount

of the security deposit $600.00 security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenants with recovery of $1,200.00 from the Landlord pursuant to sections 38 and 67 of the Act. I decline to award the Tenants with recovery of the Application filing fee, as they were only partially successful in their Application.

Conclusion

The Tenants' claim for recovery of double the security deposit is successful in the amount of $1,200.00. The Tenants' claim for compensation for other damage or loss against the Landlord is unsuccessful. The Tenants are not awarded recovery of the $100.00 filing fee for this Application.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of **$1,200.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: April 03, 2020

Residential Tenancy Branch