



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for the return of rent, for an order for the return of the security deposit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenants confirmed that they received the evidence of the landlord. The landlords stated they did not receive any evidence from the tenants. In this case, although the landlord has not received the evidence, I find it not prejudicial for my review and consideration, as the document are of emails between the parties and copy of listing.

Issues to be Decided

Are the tenants entitled to the return of their security deposit?
Are the tenants entitled to the return of rent?

Background and Evidence

The parties agreed that the parties entered into a two-year fixed term tenancy which began on April 14, 2018 and was to expire on April 30, 2020. Rent in the amount of \$3,495.00 was payable of the 1st of each month. The tenants paid a security deposit of \$1,747.50. The tenants vacated the property on August 31, 2019.

The tenants testified that they provided the landlord with their forwarding address by email. The male tenant stated it was given on or about July 29, 2019.

The tenants testified that the landlord retain their postdated cheques. The tenants stated that the landlord cash the cheques for September 2019 and October 2019, rent. However, the landlord should have returned the cheques when they vacated.

The tenants testified although they breached the tenancy agreement as they ended the tenancy earlier than the fixed term, that the landlord should not be entitled to keep the rent for September and October 2019, as they failed to mitigate the loss of rent.

The tenants testified that the rental unit was not listed on popular websites, such as craigslist or facebook and it was listed on the business website. The tenants stated that when it was listed it was for a higher rent. The tenants seek to recover the rent for October and November 2019.

The landlord testified that they never received the tenants' forwarding address by email.

The landlord's agent testified that the landlord was entitled to cash the post-dated cheques for October and November 2019 as the rental unit was not re-rented and the tenants were responsible to pay the rent until the rental unit re-rented or the expiry of their fixed term.

The landlords testified that they did advertise the rental unit on their website and other popular websites, and it was advertised at the same amount. The landlord stated there were multiple units listed for rent at that time and different unit have different amounts for rent. The landlord stated that had several applications completed by potential renters and it show that the rent was \$3,495.00. The landlords stated they have several showing and they were able to find a new tenant and their tenancy commenced on November 1, 2019, at the same rent the tenants were paying. This reducing the tenants' obligation by 5 months.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case the tenants have not complied with section 38 and section 88 of the Act. As they must provided the landlord written notice of their forwarding address and serve it in a method approved of under section 88 of the Act. Email is not an approved method of service and the landlord denied it was received. I find the tenants application for the return of the return of the security deposit premature. Therefore, I dismiss this portion of the tenants claim with leave to reapply.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

In this case, the tenants ended their fixed term tenancy on August 31, 2019. I find the tenants breached the fixed term tenancy as the earliest date they could have legally ended the tenancy was April 30, 2020.

In this case the tenant's paid the rent for September 2019 and October 2019 as the landlord had the tenants postdate cheques. No stop payments were placed on the cheques by the tenants. While the Residential Tenancy Regulations requires a landlord to return post dated cheques at the end of tenancy; however, the tenants could not legally end the tenancy until April 30, 2020.

The tenants seek the return of the rent as they alleged the landlord failed to mitigate the loss by advertising the unit at a higher amount and not advertising on other websites.

The evidence of the landlord shows they started to advertise the rental unit in early August 2019, there is no requirement that the landlord must advertise on sites such as craigslist or facebook. However, I note the landlords evidence support it was advertised on craigslist. The landlord received several applications and conducted several showings. The application for rent received by the landlord clearly show the rent that was expected to be paid was the same amount the tenants were paying. This is supported by the landlord's evidence. I am not satisfied that landlord attempted to rent the premise at a higher amount as there were multiple rental unit for rent at the time.

I find the landlords took reasonable step to minimize the tenants' responsibility under the fixed term lease as the premises was re-rented for November 1, 2019, at the same rent the tenants were required to pay under their fixed term agreement. This reducing 5 months of rent owed by the tenants. I find the tenants are not entitled to the return of rent for September and October 2019. Therefore, I dismiss this portion of the tenants' claim without leave to reapply.

Conclusion

The tenants' application for return of the security deposit is dismissed with leave to reapply. The tenants must serve the landlord with their forwarding address and serve it in an approved method under the Act.

The tenants' application for return of September and October 2019, rent 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: May 15, 2020

Residential Tenancy Branch