



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNSD, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on December 17, 2019 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 10, 2019 for:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit?

Are the Landlords entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on July 1, 2019 on a fixed term to end June 30, 2020. Rent of \$2,000.00 was payable on the first

day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$1,000.00 and a pet deposit of \$1,000.00. The Tenants moved out of the unit on December 1, 2019.

The Landlord states and makes submissions as follows:

On November 4, 2019 the Landlord received an emailed notice to end tenancy for November 30, 2019 from Tenant AM and on this same date the Landlord informed the Tenants that they did not consider texts or emails without the full time being given for the notice to end tenancy as a valid. Tenant AM then provided a written notice to end tenancy for November 30, 2019. The unit was immediately advertised online for rent of \$2,000.00. Mid November the advertised rent was reduced to \$1,950.00. New tenants were obtained for February 1, 2020 at the rental rate of \$1,950.00 monthly.

The Landlord is only seeking rent for December 2019 on the basis of the required notice period not being met by the Tenants. The Landlord is not seeking lost rental income past December 2019 arising from a breach of the fixed term.

Tenant AM states and makes submissions as follows:

On October 31, 2019 and without informing Tenant AM, co-Tenant JW texted the Landlord with a photo indicating that Tenant JW was moving out of the unit. On November 1, 2019 the Landlord provided this information to Tenant AM who then emailed the Landlord a written notice to end the tenancy for November 30, 2019 asking the Landlord to print the letter off so that it could be signed by Tenant AM. The email also indicates that confirmation to verify domestic violence as the reason for ending the fixed term would be forthcoming. The Landlord did not inform Tenant AM until November 4, 2019 that the Landlord did not consider the email letter sufficient to end the tenancy and Tenant AM then delivered a handwritten notice to the Landlord. Tenant AM paid the pet deposit and Tenant JW did not contribute to this payment.

Tenant AM argues that only Tenant JW should be liable for the rent as Tenant JW knew Tenant AM could not afford the full rent and as Tenant AM paid for the pet deposit itself.

Analysis

Section 45.1(2)(a) of the Act provides that a tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] that if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant. There is no dispute that Tenant AM is eligible to end the fixed term tenancy.

Section 45.1(3) of the Act provides that a tenant under this section 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,
- and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I do not consider a text as a valid method to end a tenancy. While an email in certain circumstances may be considered a valid method, a tenant must still give the required amount of time as notice to end the tenancy. As the rent was payable on the first day of each month, I find that the Tenant was required to provide notice to end the tenancy by October 31, 2019. Given the undisputed evidence that Tenant AM sent its notice to end tenancy on November 1, 2019 I find that the Tenant did not provide the required notice to the Landlord.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this

Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the undisputed evidence that the Landlord did not receive the Tenants' notice to end tenancy until November 4, 2019 and considering the immediate advertising of the unit, including a reduction in the rent, I find that the Landlord took reasonable steps to mitigate its loss in the circumstances of the late notice and has therefore substantiated its claim for **\$2,000.00**. As the Landlord has been successful with this claim I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,100.00**. Deducting the combined security and pet deposit plus zero interest of **\$2,000.00** from this entitlement leaves **\$100.00** owed to the Landlord. As the security and pet deposits have been deducted from the amounts owed to the Landlord, I dismiss the Tenants' application. It is noted that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Conclusion

The Tenants' application is dismissed.

I grant the Landlord an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court 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 Act.

Dated: May 19, 2020

Residential Tenancy Branch