



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male landlord" did not attend this hearing, which lasted approximately 65 minutes. The female landlord ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords").

"Witness JS" testified on behalf of the tenant at this hearing. Both parties had equal opportunities to question the witness.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and both landlords were duly served with the tenant's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to change the tenant's surname, as the tenant confirmed her new legal surname during the hearing. Both parties consented to this amendment during the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenant's security deposit?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 15, 2019 but the tenant never moved into the rental unit. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties for a fixed term from November 15, 2019 to February 28, 2020. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission from the tenant to keep any part of her security deposit. The landlord's application to retain the tenant's security deposit was filed on December 13, 2019. A written forwarding address was received by the landlord on December 22, 2019, by way of a letter that was sent by registered mail from the tenant.

The landlords seek a monetary order of \$2,912.72 plus the \$100.00 application filing fee. The tenant disputes the landlords' application.

The landlords seek \$2,625.00 for a loss of rent from November 15, 2019 to January 31, 2020. The landlord confirmed that she already received \$525.00 from the tenant for rent from November 15 to 30, 2019 and she wanted to retain it. She said that the landlords were seeking two additional months of rent loss of \$1,050.00 each month from December 1, 2019 to January 31, 2020, totalling \$2,100.00. She testified that the landlords re-rented the unit to new tenants as of February 1, 2020. She maintained that the landlords wanted to obtain \$287.72 of hydro utilities from November 15, 2019 to

January 31, 2020, from the tenant. The landlords seek to retain the tenant's security deposit of \$525.00 to offset against the above monetary order.

The landlord said that the tenant did not move into the rental unit because the tenant was not agreeable to the utilities. She stated that she explained the utilities to the tenant multiple times. She confirmed that she sent an email about the utilities to the tenant on November 9, 2019, to which the tenant responded that she would not be moving into the rental unit. She confirmed that a lot of people viewed the unit, and some turned it down, while others did not pass the landlords' credit check. She referenced copies of two emails, from November 24 and 25, 2019, where people turned down the unit. She said that she probably advertised the unit for re-rental around November 22, 2019, but she was not sure about the date, as she did not provide a copy of the advertisement. She maintained that some people had families and the unit was too small for them.

The landlord said that she turned down other prospective tenants when the tenant first signed the tenancy agreement and when she called these people to ask if they wanted to move in, since the tenant would not be moving in, they could not take the unit. She said that she posted an advertisement on January 10, 2020 for re-rental, but she did not provide a copy of same. She testified that she had a pre-planned vacation from November 27 to December 8, 2019, where she was monitoring the rental "wanted" advertisements.

The tenant disputes the landlords' entire application. She claimed that she was not told about the utilities by the landlord before signing the tenancy agreement. She confirmed that she thought the tenancy agreement was on a month-to-month basis, as she did not read it. She said that she only saw the rental unit once. She confirmed that she went to one of the cable providers' store locations and they looked up the rental unit address online and told her she needed a satellite. She said that she did not know anything about satellites, and she could not afford the extra cost, so she decided not to move in. Witness JS confirmed the above information regarding the satellite and that it was too much of a hassle for the tenant.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlords and tenant entered into a fixed term tenancy for the period from November 15, 2019 to February 28, 2020. Both parties signed the written tenancy agreement and a copy was provided for this hearing. The tenant's failure to read the agreement before signing, does not invalidate it.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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, that rent is payable under the tenancy agreement.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If she does, she may have to pay for rental losses to the landlords. In this case, the tenant ended the tenancy and did not move into the rental unit, prior to the end of the fixed term on February 28, 2020. I find that the tenant breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I allow the landlords to retain the rent paid by the tenant from November 15 to 30, 2020 of \$525.00. I find that the landlords would not have been able to re-rent the unit in the middle of the month when the tenant informed them on November 9, 2019, that she would not be moving into the unit.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for two month's rental loss of \$2,100.00 from December 1, 2019 to January 31, 2020, without leave to reapply.

I find that the landlords failed to provide sufficient documentary evidence including copies of rent advertisements, to show when they advertised the unit for re-rental, what details were given, or how long the unit was advertised for. The landlords also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. The landlords only provided two emails from November 24 and 25, 2019, indicating that two people could not take the unit.

I find that the landlords failed to show how they properly mitigated losses in their efforts to re-rent the unit. The landlord said that she advertised the unit for re-rental on January 10, 2020, which is more than two months after the tenant advised the landlords on November 9, 2019, that she would not be moving into the rental unit. I find that this delay contributed to the landlords' inability to re-rent the unit in a timely manner.

For the above reasons and because the tenant did not live in the rental unit or use the utilities during that time, I dismiss the landlords' application to recover hydro utilities of \$287.72 without leave to reapply.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security deposit of \$525.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. Although the tenant did not apply for the return of her deposit, I must deal with the deposit if the landlords have applied to retain it, as per Residential Tenancy Policy Guideline 17.

Accordingly, I order the landlords to return the tenant's entire security deposit of \$525.00 to the tenant within 15 days of receiving this decision. The tenant is provided with a monetary order for same.

Conclusion

I order the landlords to retain \$525.00, which has already been paid by the tenant for half a month's rent from November 15, to 30, 2019.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$525.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: May 14, 2020

Residential Tenancy Branch