



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT, FFT

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both parties were assisted by family members.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy began on December 2014. Monthly rent at the end of the tenancy was \$1,421.83 payable on the first of each month. A security deposit of \$650.00 was paid at the start of the tenancy and was subsequently returned to the tenant after the tenancy ended.

The tenant gave written notice to end the tenancy on December 27, 2019 with an end of the tenancy date of January 31, 2020. The tenant subsequently requested that the end of tenancy date be extended to the end of February 2020 or earlier if possible. The parties discussed the possibility of the landlord returning a portion of the monthly rent for February 2020 if the tenant was able to move out earlier than February 28, 2020 and the landlord was able to have a new occupant occupy the rental unit.

The tenant submits that they moved out on February 9, 2020 and seeks a return of \$980.00, the portion of the monthly rent from February 10, 2020 to the end of the month. The tenant submits that they had a verbal agreement with the landlord that they could obtain a return of a portion of the rent for the month.

The landlord disputes that there was an agreement that they would return the tenant's monthly rent on a per diem basis if the tenant vacated earlier than the end of the month. The landlord testified that if the tenant vacated earlier and they were able to rent out the suite to a new occupant for February 15, 2020 they would have returned a portion of the rent. The landlord submits that ultimately the tenant did not return the keys for the rental unit until the date of the move-out inspection on February 19, 2020 and they were unable to commence a new tenancy until March 1, 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the parties that the tenant paid full rent for February 2020 in the amount of \$1,421.83 as required under the tenancy agreement. The tenant submits that there was an agreement with the landlord that they were entitled to a return of a portion of the monthly rent if they vacated earlier than February 28, 2020. The landlord disputes that such an agreement was made. The documentary evidence shows that the landlord agreed to a return of a portion of the rent if the tenant vacated and the landlord was able to find a new occupant for February 15, 2020. The evidence of the parties is

that this did not happen and a move-out inspection did not occur until February 19, 2020.

The onus is on the applicant to establish their claim on a balance of probabilities. I find the tenant's testimony and interpretation of events, disputed by the landlord, to be insufficient to meet the evidentiary onus. Based on the documentary evidence I do not find that there was a true agreement between the parties that the tenant was entitled to a return of a portion of the monthly rent and in any event find that the tenancy did not end until February 19, 2020 when the keys were returned and a move-out inspection completed. I find that there is insufficient evidence in support of the tenant's claim for a monetary award and they have not met their evidentiary onus.

I find the tenant's submission that this tenancy was frustrated as they were ill, to show a fundamental misunderstanding of the principle of frustration. Frustration is defined in Residential Tenancy Policy Guideline 34 as a circumstance where, "without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible". Falling ill or delays in obtaining possession of a new rental unit is not circumstances where a tenancy agreement may be said to have been frustrated.

I find that the tenant has failed to establish their claim on a balance of probabilities and consequently dismiss it without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: July 30, 2020

Residential Tenancy Branch