



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S, FFL / MNDCT, RPP, FFT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlords’ application for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,607 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ application for:

- an order requiring the landlord to return the tenant’s personal property pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$100 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

This hearing was reconvened from a hearing on May 7, 2020 for the landlords’ application. At that hearing, I order that the landlords’ application be heard at the same time as the tenants’ applications. I issued an interim decision following that hearing setting out the reasons for this order and will not repeat them here.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Analysis

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the

hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute (except for the parties' respective claims for the recovery of the filing fees):

1. The landlords shall retain the security deposit (\$600)
2. The tenants shall pay the landlords \$700 via e-transfer on the following schedule:
 - a. \$400 by August 28, 2020; and
 - b. \$300 by September 30, 2020;
3. If the tenants fail to make the first payment on or before August 28, 2020, the full amount owing (\$700) immediately become due and payable;
4. The tenants shall send the e-transfers to the email address listed on the cover of this decision, and use the password listed thereon (if required); and
5. This arbitrator shall adjudicate the parties' claims for the recovery of the filing fees.

These particulars comprise the full and final settlement of all aspects of this dispute except for the parties' respective claims for the recovery of the filing fees. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding, which settle all aspects of this dispute between them except for their respective claims for the recovery of the filing fees.

Filing Fees

The landlords argued that the tenants' application was actually a misguided attempt to respond to their application. As such, they argued, that the tenants should not be entitled to recover their filing fee.

The tenants admitted at the start of the hearing that their application for the return of their personal property was, in fact, not a *bona fide* claim. In the description of the claim for the return of their property, they wrote:

There is no property, the Tenants would prefer the Landlords accept the \$600.00 damage deposit and keep the already paid \$333.60 of illegal monies that the common law partner of the Landlord requested in the Aug 5, 2019 email. It was the first and only correspondence from [redacted], and was shocking to both tenants so to ensure the Landlord Tenant relationship remained amicable, we felt we had no choice but to pay it. Until after reviewing the LTA.

As such, I find that there is no merit to this portion of the tenants' application.

However, the tenants also sought a monetary order (in part) for loss of quiet enjoyment of the rental unit. At the hearing the tenant LJ testified that she was required by the

landlord to keep the rental unit in a show-ready state for three showings to prospective buyers a week, but no showing actually took place.

I make no findings as to the truth of the allegations, but if true, it *may* be the basis for a valid claim for loss of quiet enjoyment.

As such, I do not find that the tenants' application was entirely without merit.

The landlords argued that they should be entitled to recover their filing fee, as the tenants, through their conduct, forced them to incur the cost of filing the application.

The landlords' application was for the recovery of November 2019 and December 2019 rent (\$1,300 each). Landlord SW testified that the tenants notified the landlord of their intention to move out of the rental unit on December 1, 2019 on November 3, 2019, thus giving insufficient notice of their intention to move out. The tenants testified that they moved out in mid-November. They testified they attempted to pay November's rent via e-transfer, but it was refused by the landlords and they did not pay any rent for December 2019.

Landlord SW testified that the tenants cancelled their November 2019 rent payment, and that the landlords served a 10 Day Notice to End Tenancy with an effective date of November 19, 2019 (the "**Notice**") on November 6, 2019 seeking November's rent.

They testified that the tenants neither contested the Notice, nor paid the claimed arrears. Section 46(5) of the Act states:

Landlord's notice: non-payment of rent

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice,

As such, it is arguable that the tenancy ended on the effective date of the Notice (November 19, 2019). I use the term *arguable*, as it may be that the effect of the tenants' giving the notice of their intention to vacate on November 3, 2019 negates this.

In light of this, however, I do not find it was an unreasonable position for the tenants to oppose paying the December 2019 rent. Accordingly, I do not find that the tenants actions caused the landlords to needlessly incur their filing fee. The success of the landlords was not a forgone conclusion.

Accordingly, in the circumstances, I find that it is appropriate for both parties to bear the cost of their respective filing fees. I make no monetary orders in these regards.

Conclusion

To give effect to the settlement reached between the parties, and as discussed at the hearing, I issue the attached monetary order ordering the tenants to pay the landlord \$700 on the schedule and subject to the terms set out above.

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: August 25, 2020

Residential Tenancy Branch