



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDCT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order of Possession, pursuant to section 54.

Both parties 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 tenant's witness also attended the hearing.

Both parties agree that the tenant served the landlords with his application for dispute resolution via registered mail. I find that the landlords were served in accordance with section 89 of the *Act*.

Both parties agree that the tenant posted the tenant's amendment on the landlord's door on August 28, 2020. The landlords testified that they received it on August 29, 2020. I find that the landlords were served in accordance with section 88 of the *Act*.

At the beginning of the hearing the tenant withdrew his application for an Order of Possession.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. The parties entered into a tenancy agreement pertaining to the subject rental property on August 9, 2020 with a move in date of August 16, 2020. The subject rental property is a house with a basement suite. The tenancy agreement pertained to the main portion of the house. Rent was to be \$2,980.00 per month. Utilities were to be split 80/20 with the basement suite, with the tenant paying 80%. Neither party provided evidence on the term of the tenancy. Both parties agree that the tenant paid the landlord a total of \$8,842.00 between August 9-10, 2020 as advance rent and security deposit.

Both parties agreed that after the tenancy agreement was signed, the landlords told the tenant that he would have to pay 100% of utilities.

The tenant testified that he verbally protested the change in the tenancy agreement and asked for the landlord to return his deposits. The tenant testified that the landlords refused to return his deposits and informed him that the tenancy agreement was signed and ongoing. The tenant testified that he could not afford to lose his deposit and confirmed with the landlords that he would move in as planned on August 16th. The tenant testified that he did not give the landlords notice to end tenancy. The tenant testified that the landlords refused to give him possession on August 16th and refused to return his deposits.

The landlords testified that three days after signing the tenancy agreement the tenant verbally informed him that the tenant did not want to move into the subject rental property and requested the return of his deposit. The landlords testified that they asked the tenant to send them a demand letter for same, but none was sent.

The landlords did not enter any documents into evidence. The tenant entered into evidence the following text messages between the parties:

- August 10, 2020:
 - Tenant: [landlord], Can you please send me out Agreement pdf
- August 11, 2020:

- Tenant: Hi [landlord R.B.], Good Morning. We are ready to move in and take residency as per our agreement. Please review email I sent and reply asap.
- Landlords:
 - You have told me that you guys are not moving in now after like 3 days ago now you're telling me that you're moving in What is going on you wanted the money back yesterday
 - Enough of this
 - And what kind of attitude is this ASAP
 - You told me to rent it out to someone else you guys are wasting my time..
- Tenant:
 - I am requesting agreement, we have not got agreement till now [landlord]. I am casually asking. If you cannot give us keys please give us our money back.
 - You said u will not give money back, we do not want to lose our money, so we will move
- Landlords: Because you told me last minute that you are not moving in.
- Tenant:
 - No [landlord], I did not say that, I told u I am working on it talking to family. Yesterday u said u will not give my fully money back. 9k is a big amount. I cant lose and dnt have time to fight legally so we will move in as per our written agreement
- Landlord:
 - Do you know my lying to me I have called Rental Tennessee yesterday and told them everything and today you're making things up...
 - Stop lying
 - You know yesterday we had talked on the phone and and on 11 August whatever the discussion is on the phone we could take it out and present that to Rental tenancy...
 - If you want your deposit back I need a demand letter
 - On August 11 you have called me and told me that you were not moving in you need the deposit back so today you called me and said you are moving I so I don't know what are you guys are doing so I need to know if you guys are moving in I need additional paperwork signed If you want your deposit back I need this written on demand letter...

- Tenant: We signed the agreement in front of Witness for Aug 16 move in, Till date you have not sent the agreement but we have Paid in Full (I sent payment proof via email). There is no pending paperwork.
- Landlord: Since you are not ready you are back and forward forward you was asking your deposit back so we are not ready before the September 1 we have to work out with the date because you guys was not sure if you guys were moving or not you guys was asking a deposit back two days ago and since then we have not moved anything from there yet.

The tenant testified that the landlords never provided him with a copy of the tenancy agreement. This was not disputed by the landlords.

Analysis

Based on the testimony of both parties and the evidence provided by the tenant, I find that the landlords attempted to change the terms of the tenancy agreement after it was signed by both parties. I find that the tenant verbally requested the return of his deposits and asked for the tenancy agreement to be cancelled. I find that the landlords refused to return the tenants deposits. I find that since the landlords would not return the deposits, the tenant elected to continue with the tenancy. I find that the tenant did not provide the landlords with a written notice to end tenancy.

Section 45 of the *Act* states:

- 45** (1)A tenant may end a periodic 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.
- (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, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the *Act* states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

I find that the verbal requests made by the tenant to cancel the tenancy agreement and have the deposits returned do not meet the form and content requirements of section 52 of the *Act*. Therefore the verbal requests were not a valid notice to end tenancy. I find that the landlords were contractually required to provide the tenant with vacant possession of the subject rental property on August 16, 2020 and failed to do so. I find that the landlords broke the tenancy agreement and are therefore required to return all monies paid to them by the tenant for rent and security deposit, in the amount of \$8,842.00.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$8,842.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: September 15, 2020

Residential Tenancy Branch