



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1210 HOLDINGS INC. and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On July 7, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

D.L. and M.M. attended the hearing as agents for the Landlord. Both Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

D.L. advised that a Notice of Hearing package was served to each Tenant by registered mail on or around July 8, 2020 and the Tenants confirmed receipt of these packages. Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Tenants have been served the Notice of Hearing packages.

She also advised that the Landlord’s evidence was served to the Tenants by registered mail on October 6, 2020, and then by email on October 10, 2020. The Tenants confirmed that they received this evidence by email on October 9, 2020 and they did not have any submissions with respect to how this was served to them. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenants advised that they served their evidence to the Landlord by registered mail on July 16, 2020. D.L. confirmed that the Landlord received this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy was supposed to start on July 1, 2020; however, the Tenants never moved into the rental unit. Rent was established at \$1,650.00 per month and was due on the first day of each month. A security deposit of \$825.00 was also paid on June 1, 2020. A tenancy agreement was never signed by the parties.

Both parties agreed that the Tenants provided their forwarding address in writing by email on June 26, 2020.

The Landlord is seeking compensation in the amount of **\$825.00** for half of July 2020 because the Tenants never moved into the rental unit. She stated that they advised her that they would not be moving in on June 26, 2020. She submitted that she immediately advertised the rental unit in an attempt to re-rent the property. She was able to secure a new tenant for July 16, 2020, and as a result, she is only claiming for the rental loss until this point. She submitted documentary evidence to support this position.

Tenant A.J. advised that they believed that the Landlord may have rented the unit prior to July 16, 2020 as the tenancy agreement of the new tenants indicates that a security deposit was collected on July 7, 2020. However, if this new tenancy agreement indicates that this tenancy started on July 16, 2020, she has no proof that the tenancy started any earlier than this date.

M.M. confirmed that the new tenants did not occupy the rental unit until July 16, 2020.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Tenants provided a forwarding address to the Landlord on June 26, 2020 and that the Landlord made the Application to keep the security deposit on July 7, 2020. As the Landlord made an Application to keep the security deposit within 15 days of June 26, 2020, I am satisfied that the Landlord complied with the requirements of the *Act* with respect to the handling of the security deposit at the end of the tenancy. As such, the doubling provisions of this Section do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into an unwritten month to month tenancy starting on July 1, 2020, yet the tenancy effectively ended because the Tenants never moved in and gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlord receives the notice, and 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. In essence, the Tenants must have given one, whole month's notice in writing to end the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the undisputed evidence, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss. Given that Landlord had been provided with minimal notification that the Tenants would be giving up vacant possession, I am satisfied that the Landlord was put in a position that it would have been difficult to rent the unit to recoup July 2020 rental loss. However, the undisputed evidence is that the

Landlord made sufficient attempts to re-rent the unit as quickly as possible after finding out that the Tenants would not be occupying the rental unit, and re-rented it for July 16, 2020.

Consequently, I am satisfied that the Tenants are responsible for the rental loss that the Landlord is seeking compensation for. As such, I grant the Landlord a monetary award in the amount of **\$825.00**. Pursuant to Section 38 of the *Act*, I allow the Landlord to retain the security deposit in satisfaction of this debt outstanding.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 29, 2020

Residential Tenancy Branch