



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On July 08, 2020, The Tenants applied for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking the return of a security deposit and a monetary order for money owed or compensation for damage or loss under the *Act*.

The Tenants and Landlord’s agent (“the Landlord”) appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties testified that they have exchanged the documentary evidence before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenants entitled to money owed or compensation for damage or loss under the Act or tenancy agreement?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on July 1, 2020 as a short-fixed term tenancy. The rental unit is a two-bedroom condominium. The Tenants had exclusive use of the rental unit. The Tenants paid the Landlord a security deposit of \$1,140.00.

The Tenants testified that the rental unit was to be their primary residence for the two-month period.

The Landlord stated that the tenancy agreement provides language that it is a short-term vacation rental. The Landlord testified that the original tenant was set to return to continue living in the unit in September 2020.

The Tenants testified that they woke up, packed up, and moved out of the rental unit on July 3, 2020; the third day after the tenancy began. The Tenants testified that they moved out due to the discovery of bed bugs. The Tenants stated that the rental unit was uninhabitable.

After moving out, the Tenants contacted the Landlord Mr. S.S. and explained what happened. The Tenants submitted that the Landlord responded saying that his assistant is dealing with the issue and they need a few days.

The Tenants testified that they received an email from the Landlord on July 6, 2020 saying that the Landlord is fumigating the rental unit and will provide alternate accommodation. The Tenants replied to the Landlord that they do not want to accept alternate accommodation.

The Tenants requested that the Landlord to pay back the rent and security deposit and a cost for a dog that sniffed their clothing for the presence of bedbugs. When the Landlord refused repayment; the Tenants applied for dispute resolution.

In reply, the Landlord testified that they received the Tenants complaint on July 3, 2020 and offered alternate accommodation on July 5, 2020. The Landlord testified that the rental unit was fumigated/ sprayed for bedbugs on July 5, 2020.

The Landlord submitted that the Tenants moved out of the unit without giving the Landlord an opportunity to fix the reported problem.

The Landlord testified that since the tenancy was a short-fixed term tenancy that could not continue at the end of the fixed term, the Landlord was not able to re-rent the unit. The Landlord testified that they advertised the unit on a local website but were unable to rent it out and they did not receive any rental income from anyone else for the two-month period.

Analysis

Residential Tenancy Branch Policy Guideline # 8 Unconscionable and Material Terms provides information on ending a tenancy due to a breach of a material term of tenancy. The Guideline provides:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Section 45 of the Act provides that a Tenant may end a tenancy by giving one month's notice in writing.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the tenancy agreement was for the Tenants to have exclusive use of the rental unit for a two-month fixed term and that the rental unit was to be the Tenants primary residence. A security deposit of \$1,140.00 was paid to the Landlord. I find that this tenancy arrangement falls under the jurisdiction of the *Residential Tenancy Act*.

I find that the Tenants did not give proper notice to the Landlord to end the tenancy in accordance with sections 44 and 45 of the Act.

With respect to whether or not the Tenants had a right under the Act to end the tenancy due to a fundamental breach of the tenancy agreement by the Landlord, I find that the Tenants did not provide the Landlord with written notice of what they considered to be a breach prior to their decision to move out. The Landlord was not given an opportunity to correct the problem before the Tenants moved out. When the Landlord was informed, of the issue he offered alternative accommodation which was declined by the Tenants. I find that the tenancy did not end due to a material breach on the part of the Landlord.

Since the tenancy did not end due to a breach of the Act by the Landlord, and since the Landlord did not receive rent from a new tenant, I decline the Tenants request for the Landlord to repay the July 2020 rent to the Tenants.

With respect to the security deposit, the Act requires the Landlord to repay the deposit or make a claim against it within 15 days of the date the tenancy ends. I find that the tenancy ended on July 3, 2020 when the Tenants vacated; however, since the jurisdiction of whether the Act applied was in question, I find that the Landlord has 15 days from the date of this decision to repay the security deposit to the Tenants or make an application for dispute resolution making a claim to keep the deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful with their claim, I decline to order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Tenants application for a monetary order to recover July 2020 rent and for the return of the security deposit was not successful.

The parties entered into a tenancy agreement under the *Act* and the Tenants did not end the tenancy in accordance with the Act.

The Landlord has 15 days from the date of this decision to repay the security deposit to the Tenants or make an application for dispute resolution making a claim to keep the deposit.

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: November 18, 2020

Residential Tenancy Branch