



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$11,900.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, A.F and A.S., and the Landlords, V.V. and G.V., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. I note that the Tenants did not submit any evidence to the RTB or serve any on the Landlords.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2019, with a monthly rent of \$2,575.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$1,300.00, and no pet damage deposit. The Landlords said they still have the security deposit. The Parties agreed that the Tenants vacated the rental unit on March 31, 2020. They agreed that the Tenants gave the Landlords their forwarding address on July 21, 2020.

The Landlords applied for dispute resolution seeking a monetary order for unpaid rent of \$11,900.00. They said they could not rent the house after the Tenants left, because they left so many possessions behind. The Landlord said:

We can't rent out the house, and we have to pay the mortgage. We had three or four people look, but they don't want to rent it, because the downstairs is full of stuff, and the garage is too. [The Tenant] said to move it in the garden. We kept telling them to take that stuff. This is lost rental income, and we have to pay the mortgage.

In answer to the question, did they consider hiring people to have it moved and stored, the Landlords said:

We considered hiring people, but we didn't know where to move it, but they said do not touch it, and 'I will move it when I get back'. If we rent the property and his stuff is in my garden, they don't want it either. He parked in our garden. He has so much stuff, I am going to spend \$1,000.00 . . . since they were communicating with me, I cannot move it, since he's communicating to us. It's their responsibility to move it.

The Tenants said:

What she said is not true. I never told them not to touch my stuff. We have the emails. I was corresponding with the husband while I was in Gambia. There was no intention to leave my stuff in their garage. I asked them to push it on one side

of the garage. Whatever the expenses, I would have paid for it. I had a tent at the back. None of it had value, and I apologized to them. I had the emails that as soon as I was able to leave Gambia..., and I gave them the right to move it.

What she said, 'I told them not to touch my belongings' is not true. [The Landlord] is here and he received those emails. I explained my circumstances in Gambia. I asked them if they could move them out in the tent or in the other garage. I didn't have any problem with that. My wife was on her own - even had to move in Covid. I had no intention to keep my stuff in their place. When I got back from Gambia, my . . . I moved everything out after I was released. I was released on July 18, came straight to our place instead of going home, they said I cannot come to our property alone. I gave them my forwarding address then. If they are not there, then I can't be there. From the 18th or 19th of July until the end of July – around the 28th of July, everything was ready, and I fixed their fence.

The Landlords said:

I agree that he picked up his stuff, but not that I'm lying. His wife told us not to touch the stuff. She wanted us to move it in the garden, but the people who wanted to rent our place – the stuff... if you see the pictures, we have plenty of stuff that we can't put to the side of the garage. The basement is full of stuff. I have a back problem. the people who want to rent our stuff they want to rent the garden, too.

We have the new tenant coming on the 1st of December. The unpaid rent we want is until July 31, since he took all his stuff. April through July. We tried to get tenants, but they wanted to rent the whole house and the garage.

The Landlords said that they did not advertise for a new tenant; rather, they said: "A friend of a friend who knows had asked someone . . . a friend of a friend wants to move here if this stuff is not here. We didn't advertise at all, but we looked for people in [online advertising platform] who were looking for places to rent. One person wanted to rent it, but didn't want it with the stuff."

The Tenants said:

To be honest, my communication with [V.V.] is very limited, so is my wife's. All of my correspondences are with [G.V.] and not her. My wife doesn't talk to her, as she's very abusive – bad experiences with her. About what she says my wife

says this and that, we never said that we would not pay. What happened here was beyond our control. I could have been in Gambia in jail for two years. I tried, even my wife was here with the two kids, even to move stuff was a problem with the Covid. I had no intention to leave my stuff. It happens. For them to turn around and not advertise their place, and just ask me to pay rent: the entire upstairs of that building was empty. No effort from them to help. Maybe storage I owe them, because my stuff was in their garage, but not intentionally. A neighbour, who was an ex-police officer, I had a lot of bad experiences with her. We are dirty black people to her. But for us to pay \$11,000 for four months? That is very unfair to be honest.

The Landlord, V.V. said:

I didn't agree with what he said that I'm rude and saying bad things about him. It's not true; it's a lie. We didn't really advertise, because no one would want to rent our house. Three or four people came to our home. They are willing to rent my room, but....

The Landlord G.V. said:

My wife is a bit more articulate than me. This whole thing, we're not after every penny. It's hard to make a living in this economy. If we lose four months' rent, we have to have some way to pay the mortgage. If we're out four months' rent, . . . we have to use legal avenues open. But we were out four months' rent.

The Tenants indicated that they were in a very difficult position. The Tenant, A.S., said that when they were in Gambia on vacation, he was arrested and faced years in jail. In the meantime, his wife returned to Canada, and she had to move out of the rental unit with her two children during the Covid-19 state of emergency. The Tenant, A.S., said that he wished the Landlords had been more helpful to them during this trying situation.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I would analyze the evidence presented to me. I said a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16") sets

out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlords to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlords did what was reasonable to minimize the damage or loss.

("Test")

I appreciate the terrible situation in which the Tenants found themselves in the Spring of 2020, and I will consider this; however, I am bound by the rules set out in the Act, Regulation and Policy Guidelines in making my decision. I must consider the rights and obligations of each Party under the legislation.

In terms of a landlord's responsibilities surrounding a tenant's personal possessions, the *Residential Tenancy Act* Regulation ("Regulation") states:

Part 5 — Abandonment of Personal Property

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

...

I find in the circumstances before me, that the Parties had been in contact about the personal property that the Tenants left behind, and that the Tenants had expressed their intention to retrieve it from the residential property. Therefore, I find that the Tenants' personal property had not been abandoned, pursuant to section 24 of the Regulation.

Pursuant to section 25 of the Regulation, I find that the Landlords were obligated to store the Tenants' personal property in a safe place and manner for a period of not less than 60 days following the date of removal.

I also find that the Tenants were remiss in leaving possessions behind at the residential property; however, given the Landlords' obligations to store the personal possessions for not less than 60 days, I find that the Landlords did not do everything they should have to mitigate or minimize their loss. I find they could have and should have moved

the Tenants' possessions to a storage unit, which the Landlords would have had to fund for up to 60 days. This would have removed the Landlords' concern that their property was unrentable, because of the items left behind. They could then have then claimed these costs from the Tenants, rather than claimed for unpaid rent, a larger cost than storage. The Landlords said: "We didn't really advertise, because no one would want to rent our house." This raises questions in my mind as to how the Landlords knew that no one wanted to rent the house without having advertised. Rather, they limited their search to people they knew, and those who advertised in search of housing. Again, I find that this demonstrates a failure of the Landlords to minimize or mitigate their loss, and I thereby find that the Landlords failed the third and fourth steps of the Test. I find that the Landlords did not establish a realistic value of their loss or damages, because they did not reasonably mitigate or minimize their damages.

Looking at the scenario as a whole, however, I find pursuant to section 62 of the Act that the Tenants' breached the Act by leaving possessions behind in the residential property after the tenancy ended on March 31, 2020. I find that both Parties hold responsibility for this situation in not having arranged to have the remaining personal property removed from the rental unit as soon as possible. As a result, in this unusual set of circumstances, I find that the Landlords are eligible for nominal damages from the Tenants, pursuant to PG #16, which states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Pursuant to PG #16, I award the Landlord a nominal amount of one month's rent of **\$2,575.00** from the Tenants for storing their personal property for four months after the tenancy ended, pursuant to sections 62 and 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$1,300.00, in partial satisfaction of the Landlord's monetary award. I also award the Landlord with recovery of the **\$100.00** Application filing fee for a total award of **\$2,675.00**, less the security deposit, pursuant to section 72.

I authorize the Landlords to keep the Tenants \$1,300.00 security deposit in partial satisfaction of the monetary award, and I grant the Landlords a Monetary Order in the amount of **\$1,375.00** from the Tenants.

Conclusion

The Landlords are partially successful in their claim for compensation from the Tenants in the form of a nominal award of \$2,575.00. The Landlords did not provide sufficient evidence that they met the four steps of the Test, and therefore, they failed to meet their burden of proof on a balance of probabilities for their full claim. The Landlords are granted a nominal award in lieu of insufficient proof of the value of their losses. The Landlords are also awarded recovery of the \$100.00 Application filing fee for a total award of **\$2,675.00**.

The Landlords are authorized to retain the Tenants' \$1,300.00 security deposit in partial satisfaction of this award. I grant the Landlords a Monetary Order of **\$1,375.00** from the Tenants for the remainder of the award. This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) 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: November 26, 2020

Residential Tenancy Branch