



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE PACIFIC REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL and MNSD, MNDCT

Introduction

On August 18, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for unpaid rent and compensation, and to be compensated for the filing fee.

On September 25, 2020, the Tenants submitted an Application for Dispute Resolution under the Act to request a Monetary Order for the return of the security deposit, and a Monetary Order for compensation. The Tenants’ Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

The Landlord’s agents, the Tenant and their advocate attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matters

During the hearing, the Landlord withdrew their claim for compensation and clarified that they are only pursuing a Monetary Order for unpaid rent.

During the hearing, the Tenants withdrew their claim for compensation and clarified that they are only pursuing the return of the security deposit.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on February 14, 2019 and continued as a month-to-month tenancy. The rent was \$2,500.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,250.00.

The Landlord submitted a copy of an email received from the Tenants on May 4, 2020, stating that the Tenants had moved out of the rental unit and would like their security deposit returned.

The Landlord replied to the email on the same day stating their surprise and reminding the Tenants that they are required to provide 30 days notice.

The Landlord testified that there had been no prior notice to end the tenancy. The Landlord stated they immediately attempted to find new tenants for the rental unit and did so for June 15, 2020. As such, the Landlord is claiming a loss of rent for May 2020 in the amount of \$2,500.00 and for half a month's rent for June 1-14, 2020, in the amount of \$1,250.00.

The Tenants submitted a copy of a letter, dated February 24, 2020, that they mailed to the Landlord's place of business at or around February 24, 2020. The letter contained the information that the Tenants planned on ending the tenancy and vacating the rental unit as of April 30, 2020.

Tenant MC submitted an affidavit stating that he was present with Tenant KK when she mailed the notice to end tenancy letter to the Landlord's place of business. Tenant MC referenced the conversations they had with the Residential Tenancy Branch and Canada Post about Canada Post not receiving signatures for deliveries during the pandemic and for that reason, chose not to enter the post office to mail the letter via registered mail.

The Tenants submitted an affidavit, dated November 22, 2020, from a witness who was also present during the mailing of the notice to end tenancy letter to the Landlord. The letter includes the witness' observations of Tenant KK mailing the letter and that the letter included a return address in case the letter wasn't delivered.

The Tenants testified that they moved out of the rental unit by April 30, 2020 and when they didn't hear from the Landlord, emailed them on May 4, 2020 to explain where they had left the keys, garage door openers and that they would like to receive their security deposit via e-transfer.

Analysis

The Landlord submits that the Tenants did not provide the proper notice to end the tenancy and as a result, the Landlord incurred a loss of rent. The Tenants submit that they did provide the proper notice to end the tenancy and request the return of the security deposit.

The success of each claim hinges on the determination of whether the Tenants provided proper notice to end the tenancy.

Section 45(1) of the Act authorizes a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 88(c) of the Act authorizes the service of a tenant's notice to end tenancy by sending a copy by ordinary mail to the business address of the landlord.

In this case, the Tenants have submitted a copy of their notice to advise the Landlord that they intended to end their periodic tenancy on April 30, 2020. The Tenants testified that this notice was sent via regular mail at the end of February 2020 and provided an affidavit of a witness who observed the Tenant KK placing the notice in a Canada Post mailbox.

I accept that the agent for the Landlord seemed surprised by the May 4, 2020 email from the Tenants when notified they had vacated the rental unit. However, I have no evidence in front of me to demonstrate that the Tenants didn't send the notice to end tenancy to the Landlord as described, nor any evidence as to why the Tenants wouldn't have provided proper notice.

Upon review of the testimony and evidence before me, I find, based on a balance of probabilities, that the Tenants did mail their notice to end tenancy to the Landlord at the end of February 2020, in accordance with section 88(c) of the Act. I find that the delivery of the Tenant's notice would have arrived at the Landlord's place of business at the end of February or early March 2020. Either way, the notice would have provided the

Landlord with the Tenants' intention to end their periodic tenancy on April 30, 2020, in accordance with section 45(1) of the Act.

As I have found that the Tenants ended their tenancy in accordance with the Act, I dismiss the Landlord's claim for unpaid rent for May and June 2020.

As I have found that the Tenants ended their tenancy in accordance with the Act, I order the Landlord to return the Tenants' security deposit within 15 days of receiving this Decision.

Conclusion

I order the Landlord to return the Tenants' security deposit within 15 days of receiving this Decision. If the Landlord fails to do so, they may be at risk of owing the Tenants double the amount of the security 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: December 9, 2020

Residential Tenancy Branch