



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 14, 2020 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing and appeared for Tenant H.D. The Landlord appeared at the hearing. K.M. and G.M. appeared for B.B.A.L. which was originally named as a landlord on the Application. All parties agreed B.B.A.L. should be removed from the Application and therefore I have not named them in the style of cause. All parties also agreed K.M. and G.M. did not need to be involved in the hearing and therefore I allowed K.M. and G.M. to exit the conference call before proceeding.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. G.M. submitted a Management Agreement between B.B.A.L. and the Landlord. The Landlord confirmed he did not submit evidence prior to the hearing. The Landlord confirmed receipt of the hearing package and Tenant’s evidence.

During the hearing, the Tenant referred to a receipt for storage in evidence. The Landlord testified that he did not receive this receipt. The Tenant agreed he did not provide the Landlord this receipt. The Tenants were required to serve this on the Landlord pursuant to rule 3.14 of the Rules of Procedure (the “Rules”). Pursuant to rule 3.17 of the Rules, I have not considered the receipt as I find it would be unfair to the Landlord to do so when the Landlord did not receive a copy of it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the Tenants' documentary evidence, other than the receipt. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$2,795.00 for the Landlord ending the tenancy in breach of the *Residential Tenancy Act* (the "*Act*").

A written tenancy agreement was submitted and the parties agreed it is accurate. The Landlord confirmed he is the owner of the rental unit and was the landlord. The tenancy was to start November 01, 2020. It was to be for a fixed term of one year and then continue on a month-to-month basis. Rent was to be \$2,295.00 per month due on the first day of each month. The Tenants paid a security deposit of \$1,147.50. The agreement was signed September 25, 2020 by the Tenants and September 28, 2020 by G.M. as agent for the Landlord.

The Tenant testified that the security deposit was paid September 29, 2020.

There was no issue that the Tenants never moved into the rental unit.

The Tenant testified as follows.

The Landlord did not provide written notice in accordance with section 52 of the *Act* ending the tenancy. The Landlord did not provide any written notice. The Tenants received a voice message and email October 02, 2020 from G.M. stating the Landlord was ending the tenancy as the Landlord was going to move into the rental unit. The Landlord ended the tenancy before the end of the fixed term and did not provide a Two Month Notice. The Landlord failed to comply with the *Act* in relation to ending the tenancy.

When the Tenants received notice October 02, 2020 that the Landlord was ending the tenancy, they had to try and find a new place last minute. They were moving to the rental unit city due to their son's therapy needs. The Tenants had already given notice ending their previous tenancy with their previous landlord. The Tenants could not find a rental for November.

The Tenants are seeking one month's rent and an additional \$500.00. In relation to the request for \$500.00, the Tenants had to store their belongings and stay with their mother for a month due to the Landlord ending the tenancy. The storage cost \$375.09. The Tenants also incurred registered mail costs in relation to this matter. The Tenants experienced added stress trying to get their son used to new schedules and places.

The Tenants' security deposit was returned October 07, 2020.

The Tenants applied for an Order of Possession for the rental unit through the RTB; however, the hearing date would not have occurred before the November 01, 2020 move-in date and therefore the Tenants changed their application to seek monetary compensation.

The Tenants should be awarded the additional \$500.00 because of the liquidated damages clause in the tenancy agreement which the Landlord would have been awarded if the Tenants had ended the fixed term tenancy early.

The Tenant pointed to section 16 of the *Act* in relation to when rights and obligations under a tenancy agreement take effect.

The Landlord testified as follows. The lease was finalized September 28, 2020. The security deposit was paid September 29, 2020. He informed B.B.A.L. October 01, 2020 that he was no longer able to rent the unit out because he needed to move into it. He could not afford the place he was living anymore. B.B.A.L. relayed this to the Tenants October 02, 2020. He was told by G.M. that the security deposit was returned to the Tenants October 06, 2020 and there was a mutual release on this date.

The Landlord took the position that once the security deposit was returned to the Tenants, this constituted a mutual agreement between the parties to end the tenancy or relieved him of his obligations under the tenancy agreement. At first, the Landlord suggested that there was a mutual agreement to end the tenancy between the parties. The Landlord then clarified that what he meant was that the security deposit was returned to the Tenants and at that point he had no further obligations. The Landlord

could not point to a section of the *Act, Residential Tenancy Regulation*, Policy Guidelines or a term of the tenancy agreement that supported his position.

In reply, the Tenant confirmed there was no mutual agreement to end the tenancy between the parties.

The Tenant submitted the October 02, 2020 email from G.M. It stated that the Landlord is unable to complete the contract as he needs to move into the property himself. I note that the Tenant responded in part as follows:

...notifying me of the owner/landlords decision to break the lease prior to me being granted tenancy. For all legal purposes the lease agreement is in place and must be honoured. As stated in the residential tenancy act a fixed term lease must end no early [sic] than the date specified on the lease and with at least 2 months written notice. This has not been done. See section 49 of the act. Based on all this information I have filed for dispute resolution for you and the owner to comply with the tenancy act...You and the owner have broken a legally binding written agreement and I request you make this right.

I note that the email also details the stress that the information has caused the Tenants.

The Tenant also submitted further emails between him, the Landlord and G.M. I do note that the further emails do not load properly such that it appears numerous pages are blank. However, one of the emails is from G.M. to the Landlord and states:

I have advised the tenant. He has since returned my messages to say that he has spoken to a lawyer and the tenancy board. He has in turn advised me that he will not accept his deposit back as he has a legally binding contract with you for the rental property. He has as well advise [sic] that he will be filing against you for damages incurred if he is unable to move in on the first.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 16 of the *Act* states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy agreement was entered into September 28, 2020 when the Tenants and an agent for the Landlord had signed the tenancy agreement. Further, the tenancy agreement was a legally binding contract as of September 29, 2020 when the security deposit was paid. Pursuant to section 16 of the *Act*, both parties were bound by the tenancy agreement as of September 29, 2020, despite the Tenants never moving into the rental unit.

I am satisfied based on the email in evidence that the Landlord ended the tenancy October 02, 2020 through the email sent to the Tenants by G.M.

I am not satisfied the Tenants agreed to an end to the tenancy for the following reasons. There is no written document before me that could be construed as a mutual agreement to end the tenancy. The Landlord did not point to any documentary evidence showing a mutual agreement to end the tenancy. The Tenant denied there was a mutual

agreement to end the tenancy. The documentary evidence before me shows the Tenants stated in no uncertain terms that they expected the Landlord to follow through with the tenancy agreement and would consider any failure to do so a breach for which they would seek remedy through the RTB.

I do not accept that the Landlord returning the security deposit October 06, 2020 constituted a mutual agreement to end the tenancy or relieved the Landlord of his obligations under the tenancy agreement for the following reasons. The Landlord ended the tenancy October 02, 2020, prior to the security deposit being returned. The Tenants were clear in their position about the Landlord breaching the tenancy agreement and *Act* and seeking remedy through the RTB. Further, the Landlord could not point to a section of the *Act*, *Residential Tenancy Regulation*, Policy Guidelines or term of the tenancy agreement that supported his position and I am not aware of any.

In the circumstances, I am satisfied the parties were bound by the tenancy agreement as of September 29, 2020. I am satisfied the Landlord ended the tenancy October 02, 2020.

Section 44 of the *Act* sets out how a tenancy can end. The Landlord stated that he ended the tenancy because he needed to move into the rental unit. This would usually be dealt with through a notice issued pursuant to section 49 of the *Act*. The Landlord did not comply with section 49 of the *Act* as he did not give two month's notice, he ended the tenancy before the end of the fixed term and he did not provide a notice that complies with section 52 of the *Act*. The Landlord did not end the tenancy in accordance with any other section of the *Act*. Therefore, I find the Landlord breached the *Act* and the tenancy agreement by ending the tenancy on the date and in the manner he did.

I am satisfied based on the Tenant's testimony that the Landlord's breach caused the Tenants to have to look for a new rental unit last minute, move in with their mother for a month and put their belongings into storage. I am also satisfied based on the Tenant's testimony that the situation caused the Tenants stress. I find the Tenant's testimony accords with common sense. The Tenant's position is also reflected in his email to G.M. I had no concerns about the reliability or credibility of the Tenant. In the circumstances, I am satisfied the Tenants suffered loss due to the Landlord's breach. I also note that the Landlord did not make any compelling submissions disputing this point.

In relation to the amount or value of the loss, I am satisfied \$2,795.00 is reasonable as one month's rent plus \$500.00 for the following reasons. I do not rely on the liquidated damages clause or the registered mail costs in deciding this. However, I accept that the Tenants did not have their own place for one month due to the Landlord's breach and I am satisfied the value of this is one month's rent being \$2,295.00. Further, I am not satisfied one month's rent fully compensates the Tenants for their loss for the following reasons. The Tenants did not just lose their own place for one month, they lost a tenancy which was supposed to be for a fixed term of 12 months. Further, the Tenants had to look for a new place last minute and had to move their belongings into storage, which I am satisfied they paid for. I am satisfied an additional \$500.00 is reasonable to compensate the Tenants for the loss beyond losing their own place for one month. I also note that the Landlord did not make any compelling submissions disputing the amount sought.

In relation to mitigation, I am satisfied the Tenants took reasonable steps to mitigate their loss by attempting to obtain an Order of Possession for the rental unit and by staying with their mother for November versus incurring additional costs to stay somewhere else. I also note that the Landlord did not make any compelling submissions disputing this point.

In the circumstances, I am satisfied the Tenants are entitled to the \$2,795.00 sought and award the Tenants this amount pursuant to section 67 of the *Act*.

Given the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$2,895.00 and are issued a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to \$2,895.00 and are issued a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it 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 *Act*.

Dated: December 14, 2020

Residential Tenancy Branch