



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 20, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants as well as the Tenant's witness D.A. appeared at the appointed time of the hearing. The Tenants testified that they served the Landlord with the Application package and documentary evidence on September 25, 2020 by Registered Mail. The Tenants provided a copy of the Registered Mail receipts in support. Therefore, pursuant to Sections 89 and 90 of the Act, the Landlord is deemed to have been served with the above-mentioned documents 5 days later.

The Tenants were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenants stated that they attended a viewing of the rental unit in December 2019 and indicated to the Landlord's Agent that they were interested in renting the rental unit. The Tenant's witness D.A. stated that he was hired by the Landlord to act as her Agent. D.A. stated that the Landlord wished to find a Tenant for January 15, 2020, however, the Tenants were only interested in renting the rental unit as of February 1, 2020.

The Tenants stated that they signed a tenancy agreement which had been prepared by the Landlord's Agent on December 30, 2019 agreeing to a one-year fixed term tenancy. D.A. stated that he notified the Landlord that the Tenants had agreed to enter into the tenancy agreement which was meant to commence on February 1, 2020. The Tenants agreed to pay a monthly rent in the amount of \$1,700.00 to the Landlord.

D.A. stated that the Landlord refused to sign the agreement and did not agree with the Tenants moving into the rental unit effective February 1, 2020. D.A. stated that the Landlord wished to have a Tenants move in sooner, therefore, the Landlord did not sign the tenancy agreement, nor did she authorize the Landlord's Agent to sign the agreement on the Landlord's behalf.

The Tenants stated that they were now required to find an alternate accommodation and found a new comparable rental unit at a greater cost of \$2,100.00 a month. The Tenants are therefore claiming for the difference of \$400.00 rent over what would have been a 12 month fixed term tenancy agreement which amounts to ($\$400.00 \times 12 \text{ month} = \$4,800.00$). If successful, the Tenants are also seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the

Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

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

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

Section 16 of the *Act* outlines the start of rights and obligations under tenancy agreement;

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.

In this case, the Tenants signed a tenancy agreement which was prepared by the Landlord's Agent on December 30, 2019. While the Tenants agreed to the terms of the tenancy agreement, and signed the agreement demonstrating their intent to move into the rental unit, I find that the Tenants provided insufficient evidence to demonstrate that the Landlord agreed to the same terms. I find that the agreement provided by the Tenants lacks any signature or acknowledgement by the Landlord that she intended to enter into this agreement.

I am satisfied based on the testimony provided by D.A. that the Landlord had intended to find a tenant to occupy the rental unit prior to February 1, 2020 and therefore did not agree to rent out the rental unit to the Tenants. D.A. further clarified that the Landlord did not consent to the Landlord's Agent signing the agreement on her behalf as she was not in agreement with it. As such, I find that the tenancy agreement is not valid based on the fact that it was not entered into by both parties. Therefore, the Landlord is not bound by the rights and obligations under the agreement.

In light of the above, I dismiss the Tenants' Application without leave to reapply. Seeing as the Tenants were not successful in their Application, the Tenants are not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenants' Application for monetary compensation without leave to reapply as I find that the tenancy agreement dated December 30, 2019 was not entered into by both parties. As such, the Landlord is not bound by the rights and obligations under the agreement.

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: January 12, 2021

Residential Tenancy Branch