



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL
 MNSDS-DR

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution, filed on October 13, 2020, the Landlords sought monetary compensation from the Tenants for loss of rent, authority to retain the Tenants' security deposit and recovery of the filing fee. In the Tenants' Application, filed on October 21, 2020, they sought return of their security deposit and recovery of the filing fee.

The hearing of the cross applications was conducted by teleconference at 1:30 p.m. on February 12, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen to the Tenants' security deposit?

3. Should either party recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began June 1, 2018. Monthly rent was payable in the amount of \$1,800.00. The Landlord, G.B., submitted that rent was payable on the 1st of the month.

Introduced in evidence were copies of two residential tenancy agreements. One agreement, which was signed by the Landlord D.B. only, was one page and included a provision that rent was due on the 1st of the month. The second agreement, which was signed by both parties, and was on the standard for tenancy agreement available on the Residential Tenancy Branch website, did not include a date by which rent was payable.

The Landlord, G.B., testified that on September 1, 2020 the Tenants informed the Landlords that they intended to move out by the end of the month. G.B. further testified that he told the Tenants that they needed to provide notice in writing and that they should have provided it the day before. G.B. stated that following this conversation, the Tenants provided a hand-written notice to end their tenancy on September 2, 2020.

The Landlord stated that the Tenants moved out on October 3, 2020 as they were still cleaning on October 1 and 2. The Landlord confirmed that they were able to re-rent the unit as of October 28, 2020 and the new tenants paid rent as of November 1, 2020. In terms of marketing, G.B. stated that he posted the unit on Facebook Marketplace and Kijiji. He stated that he also showed the rental unit to approximately five other couples.

G.B. confirmed they were only seeking to retain the Tenants' security deposit of \$900.00 even though they lost rental income of one full month.

In response to the Landlords' claims and in support of their claim, the Tenant, V.D., testified as follows.

V.D. stated that the rent was due on the 2nd or 3rd of the month. V.D. stated that he offered to pay e-transfers for the rent on the 1st, but the Landlord requested payment by cash or cheque and insisted on picking up the rent and did so on the 2nd or 3rd to pick up the rent. In support the Tenants provided copies of text communication with the Landlords wherein they confirm pick up of the rent on the 2nd and 3rd of several months. In one such communication from December 2019, the Tenant writes:

“Hey there i was wondering if you guys would mind if we payed January’s rent on the 3rd and not the 2nd this time. Thanks”

[reproduced as written]

In another text dated July 2, 2020, the Tenant writes:

“Hey can we meet up earlier tomorrow to pay rent?”

The Tenants submitted that as rent was paid on the 2nd or 3rd of the month, the notice to end their tenancy satisfied the requirement to provide notice 30 days in advance. The Tenant confirmed that he gave verbal notice to the Landlords on September 1, 2020 and when the Landlords asked for it to be in writing at which time they put a written notice in their mailbox. He confirmed this by text message sent on September 2, 2020 (a copy of which was provided in evidence before me).

The Tenant also stated that at no time did the Landlord indicate that they needed to give Notice to End the tenancy on the 31st of August, and had they been informed of this they would have stayed another month. He noted that they hadn’t even rented a new place at that point.

The Tenant testified that they fully moved out of the rental unit by October 1, 2020. The Tenant stated that there was a bin that they had to empty but they did so on October 1, 2020. In support of this testimony the Tenants provided a copy of text communication with the Landlord from October 1, 2020 confirming they tried to meet to return the keys and get the deposit back as well as the fact the bin was being removed on that date as well.

In reply the Landlord confirmed he did not want to receive electronic transfers for rent, as they wanted to go to the house to pick up rent in person so they can see what is going on in the rental property.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlords alleged the Tenants failed to give proper notice to end their tenancy such that the Landlords suffered a loss of one month’s rent. The Landlords sought monetary compensation for loss of rental income for the month of October 2020.

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

The Landlords testified that initially the Tenants only provided verbal notice to end their tenancy. At the Landlords request the Tenants provided written notice. The Landlords testified this was provided on September 2, 2020; the Tenants testified they provided written notice on September 1, 2020.

As noted above, section 45(1)(b) provides that a tenant may end a periodic tenancy provided they give notice on the day before the day in the month that rent is payable under the tenancy agreement.

The parties also disagreed as to the date rent was payable. The Landlords argued it was the first of the month; the Tenants argued it was the 2nd or the 3rd.

Introduced in evidence were two tenancy agreements, only one was signed by both parties. There was no date by which rent was payable on the signed agreement. Although one agreement provided that rent was payable on the 1st of the month, it was not signed by the Tenants. I find the signed tenancy agreement to be representative of the parties' agreement with respect to this tenancy and I give no weight to the agreement which was not signed by the Tenants.

When interpreting contracts such as residential tenancy agreements, guidance can be found in G.H.L. Fridman, "The Law of Contract in Canada" (Carswell, Thomson Canada Limited, 1994), which provides the following at pages 466-472:

- Where there is no ambiguity in a written contract it must be given its literal meaning .
- In accordance with what is sometimes referred to as the "golden rule", words must be given their plain, ordinary meaning, at least unless to do so would result in an absurdity.
- If there are two possible interpretations, one of which is absurd or unjust, the other of which rational, the latter must be taken as the correct one, on this basis of giving effect to the general contractual intentions of the parties.
- The contract should be construed as a whole, giving effect to everything in it if at all possible.
- No word should be superfluous.
- If a single transaction is carried into effect by several documents, the whole is treated as one document and they must all be read together for the purpose of ascertaining the intention of the parties.
- Where the contract is ambiguous, the application of the *contra proferentem* rule ensures that the meaning least favourable to the author of the document prevails.

In other words, where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract.

In the case of residential tenancies, the contract is the residential tenancy agreement, and as it is the landlord who drafts the residential tenancy agreement, any ambiguity in the agreement must be interpreted in favour of the tenant.

I find the signed tenancy agreement was silent in terms of the date rent was payable. The evidence before me indicates there was flexibility in terms of the date rent was payable during this tenancy. I accept the Tenants' testimony and evidence that the Landlord attended on the 1st, 2nd and 3rd to retrieve rent payments. I therefore find there was ambiguity in terms of the date rent was payable in this tenancy.

On this basis, I find the Landlords cannot rely on the strict wording of section 45(1)(b) as they were flexible with rent payments and have not established rent was payable on the 1st.

I find the Tenants gave notice to end their tenancy on September 1, 2020. I am persuaded by the electronic communication provided by the Tenants that notice was provided on this date. I accept the Tenants' testimony that they provided written notice on this date after the Landlords informed them their verbal notice was insufficient. I also accept the Tenants' evidence that they were moved out of the rental unit by October 1, 2020. The electronic communication provided by the Tenants confirms their testimony in this regard. As the parties had flexibility in the date rent was payable, I find the Tenants in compliance with section 45 of the *Act*.

Although the Landlord testified that they attempted to re-rent the unit, they did not provide any specific information as to the dates of showings, or details of prospective tenants, nor did they provide any documentary evidence to support their testimony that they attempted to minimize their losses by renting the unit as soon as possible.

For these reasons I decline the Landlords' request for monetary compensation for loss of rent for the month of October 2020. Consequently, their request to retain the Tenants' security deposit and recover the filing fee is also dismissed.

The evidence indicates that the Landlords applied for dispute resolution on October 13, 2020, which was within the 15 days required by section 38 of the *Act*. As such, the doubling provisions of section 38(6) do not apply.

The Tenants are entitled to return of their security deposit in the amount of \$900.00. As they have been successful in their Application, they are also entitled to recover the \$100.00 filing fee for a total award of **\$1,000.00**. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$1,000.00**. This Order must be served on the Tenants and may be filed in the B.C. Provincial Court (Small Claims Division).

As discussed during the hearing, electronic payments of rent are preferred over cash and cheque payments as payment is immediate and there is a clear record of the transaction. Further, the Landlords are reminded that tenants are entitled to quiet enjoyment and the right to reasonable privacy and that while a landlord is permitted to inspect the rental unit monthly, such inspections must be done in accordance with section 29 of the *Act*.

Conclusion

The Landlords claim for monetary compensation from the Tenants is dismissed.

The Tenants claim is granted; they are entitled to return of their \$900.00 security deposit and recovery of the \$100.00 filing fee.

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: February 16, 2021

Residential Tenancy Branch