



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT
 MNDCL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on December 11, 2020. The Tenants applied for the return of their security deposit and the return of their filing fee.

The Landlord’s Application for Dispute Resolution was made on December 12, 2020. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover her filing fee.

Both the Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

Issues to be Decided

- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agreed that they entered into a tenancy agreement set to begin on December 1, 2020, and that the Tenants had paid the Landlord a \$900.00 security deposit at the time of signing the tenancy agreement. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

It was also agreed that the Tenants never moved into the rental unit. Instead, they provided verbal and text message notification to the Landlord on November 5, 2020, that they no longer wanted to rent the rental unit.

Both the Landlord and the Tenants agreed that written notice to end the tenancy was given to the Landlord on December 4, 2020.

The Landlord testified that they started looking for a new renter to take the rental unit as soon as they received the Tenants verbal notice to end the tenancy on November 5, 2020. However, they were not able to secure a new renter until December 15, 2020.

The Landlord is requesting to recover their lost rental income between December 1, 2020 to December 15, 2020, in the amount of \$900.00.

The Tenants are requesting the return of their \$900.00 security deposit.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement signed between these parties, and I find that these parties entered into a month-to-month tenancy that was set to start on December 1, 2020, in accordance with the Act.

I accept that the agreed-upon testimony of these parties that the Tenants gave verbal notice to end the tenancy of the Landlord on November 5, 2020 and served the Landlord with written notice to end their tenancy on December 4, 2020.

Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

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

In this case, I find that the Landlord received the Tenants written notice to end the tenancy on December 4, 2020. Based on when the Landlord received the Tenants' notice, I find that this tenancy could not have ended, in accordance with the *Act*, before January 31, 2021.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

I find that the Tenants were in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. I accept the Landlord's testimony that they attempted to rent the unit as soon as possible and were able to find a new renter for the rental unit as of December 15, 2020. I also accept that the Landlord suffered a loss of rental income for half a month's rent for December 2020.

Therefore, I find the Landlord has established an entitlement for the recovery of their loss of rental income for December 2020, in the amount of **\$900.00**. I grant permission to the Landlord to retain the security deposit they are holding for this tenancy in full satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their applications, I find that the Landlord is entitled to recover their \$100.00 filing fee paid for this application. I grant the Landlord a monetary order in the amount of \$100.00 for the recovery of their filing fee.

Conclusion

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$100.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: March 9, 2021

Residential Tenancy Branch