



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$1,280.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, K.P. and B.C., and the Landlords, H.G. and V.G., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Three witnesses for the Tenants were also present and provided affirmed testimony.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing, and added an email address for the Tenant, K.P. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

While I was reviewing the Parties in attendance, the Tenant, K.P., advised me that she

had been married and now used a different last name from that identified in the Application as "K.B." As a result, I amended this Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issues

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2020 and was to run to December 31, 2020 and then operate on a month-to-month basis. They agreed that the Tenants paid the Landlords a monthly rent of \$1,346.00, due on the first day of each month. The Parties agreed that the Tenant, K.P., paid the Landlords the bulk of the \$640.00 security deposit, and the \$640.00 pet damage deposit. K.P. had lived in the rental unit since 2016, and had obtained different roommates throughout the tenancy. The Parties agreed that B.C. had contributed \$40.00 to the deposit, as well, but K.P. had provided the deposits to the Landlords early in the tenancy.

The Parties agreed that K.P. moved out on November 13, 2020, and that B.C. moved out on or about November 23, 2020. They agreed that the Parties did a move-in condition inspection of the rental unit at the start of the tenancy and that they did a move-out condition inspection at the end of the tenancy; however, the Landlords failed to give the Tenants a copy of the condition inspection report ("CIR"). K.P. said she gave the Landlords her forwarding address at her Mother's home which was delivered to the Landlords on October 30, 2020, with K.P.'s one month notice to end the tenancy as of November 30, 2020.

K.P.'s notice to end the tenancy was as follows:

[K.B.]

10/30/2020

This is my notice to end tenancy come December 2020 for the unit at [rental unit address]. Thank you for being such great people during my time here and wish you the best. My move out date is tentatively around November 13th but will update you if that changes. If you need a mailing/contact address in the future any mail can be sent to [forwarding address].

Thank you again,

[Signature]

[Printed name]

B.C.'s notice to end the tenancy was an email dated October 31, 2020, as follows:

I left a letter in your mailbox but just in case this is an official letter of intent to move out of [rental unit address]. I will move out at the end of November, when [K.] does.

Regards,

[B.]

The Landlords said that they did not collect rent from the Tenants for December 2020, which was the last month of the fixed term agreement; therefore, they retained the security deposit and applied for dispute resolution claiming against the deposit.

K.P. said that the Landlords were aware of what was going on in her life and that she and B.C. had not wanted to sign a fixed term agreement in September 2020, because changes were happening to their lives at that time. K.P. had applied for a VISA to emigrate to the United States with her fiancé, and that she anticipated having to leave in October or November. In her submitted statement, K.P. said: "...postponing any move would jeopardize the process of my immigration, due to the impact of the Coronavirus and changing conditions with the borders of Canada and the USA. I was assured by [H.G.] that if the required one month notice was given that there would be no issues leaving."

The Parties discussed what occurred at the move-out inspection, with the witness, A.A., saying:

[The Landlords] mentioned that they had not planned to have tenants in December. There was no reason why. I remember thinking it wouldn't take long to paint, but they didn't indicate any specific reason.

The Witness, T.G., who was also present for this inspection said:

I don't disagree with [A.A.]. They stated how happy about condition of the suite. [K.B.] asked about how deposits would be returned, and the [Landlords] said the deposit would be withheld as last months' rent. They were not going to rent the suite until January. No reason was given; they just stated, we're not going to rent it out for December.

The Landlord, H.G., said that they advertised in two online platforms in November after they received the one-month notice from the Tenants. She said:

[V.G.] had talked to [the witness, A.A.], as she had been a previous tenant who had said she would be interested, if a spot came up. We decided to give her first priority.

We decided to see her in person after November 1, and we did see her in the back driveway. I said the place is now available. She was interested, but had to talk to her boyfriend first, I gave her my phone number, and she texted that she didn't want the suite. So [V.G.] and I posted in [the online advertising platforms]. Starting for December 1, we had a number of people come look, but no one was interested. There were multiple reasons, pets, the time of year. . .

I don't think anything was said about the state of people renting it after they left at all. They asked about getting the deposit back, and we said no, we're keeping it in lieu of rent. The evidence of asking [A.A.] to rent it – we asked her in November, and then also posted on [the advertising platforms] available for rent December 1st. We rented it out for January 1st – shortly after – two people reached out on December 1 interested in renting in January.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 45(2) of the Act states that a tenant may end a fixed term 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.

I find this means that the Tenants' notices to end the tenancy should have been effective December 31, 2020, not November 30, 2020.

Further, section 52 states that 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, and
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- ...

In this case, I find that the Tenants moved out in November 2020, and that they paid the Landlords up to the end of November. I find that K.P.'s notice was consistent with section 52 of the Act. Further, pursuant to Policy Guideline #13, "Rights and Responsibilities of Co-tenants", states:

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

Accordingly, K.P.'s notice applied to B.C., as well, which was confirmed by B.C.'s subsequent notice to the Landlords. I find that this notice to end tenancy was consistent with section 52 as to form and content. However, the Tenants had a fixed-term tenancy agreement with the Landlords, which meant that they were responsible for the rent until the end of the tenancy, although the Landlords had an obligation to mitigate their losses in this regard.

I find that the Landlords were reasonable in their efforts to find a new tenant, and therefore, mitigated their losses, given the circumstances. I find that the Landlords sought out A.A. as a possible tenant, as she had expressed an interest in returning to the rental unit; in addition, they advertised on two advertising platforms to find tenants.

Further, I note that (i) the Landlords had only a month to find new tenants for the last month of the fixed term, (ii) December was a holiday month, and (iii) January was the start of a new school term. I find it more likely than not that, given these factors January 2021 would be a more appealing time for potential tenants to start a new tenancy than would December 2020.

I find that the Landlords are successful in their Application, as I find that the Tenants breached sections 26 and 45 of the Act by ending the tenancy before the end of the fixed term.

The Tenants submitted evidence that the Landlords had known about their uncertain timeline that fall and that they expressed understanding about the Tenants' potential to end the tenancy early. However, the parol evidence rule is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract. I find that the Tenants signed a legally binding tenancy agreement, to which they were bound under the Act, the tenancy agreement, and the law of contract.

Accordingly, I award the Landlords with **\$1,280.00** in unpaid rent, pursuant to section 67 of the Act. I also award the Landlords recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits in partial satisfaction of the Landlords' monetary awards. The Landlords are authorized to retain the Tenants' security and pet damage deposits in partial satisfaction of the awards. I grant the Landlords a Monetary Order of **\$100.00** against the Tenants for recovery of the remaining amount of their award, pursuant to section 67 of the Act.

Conclusion

The Landlords' Application for recovery of unpaid rent is successful in the amount of \$1,280.00. Further, the Landlords are also awarded recovery of the \$100.00 filing fee from the Tenants.

The Landlords are authorized to keep the Tenants' security and pet damage deposits of \$1,280.00 in partial satisfaction of their awards. I grant the Landlords a Monetary Order

from the Tenants in the amount of **\$100.00** for the remainder of the monetary award owing by the Tenants to the Landlords.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 01, 2021

Residential Tenancy Branch