



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord and the tenant TE attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receipt of the landlord's evidence. The tenants did not submit evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and 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). 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.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and recovery of the filing fee?

Background and Evidence

This tenancy began on April 1, 2017, for a monthly rent of \$1,800, and a security deposit of \$900 being paid by the tenants to the landlord. The landlord has retained the tenants' security deposit. Filed in evidence was a copy of the written tenancy agreement.

The landlord's monetary claim is \$900.

In support of his application, the landlord submitted that the tenants did not provide sufficient notice that they were vacating the rental unit, which caused a loss of rent revenue for the following month. The landlord submitted that he had a conversation with the tenants on December 8, 2020, but was not given a firm date. The conversation was more of a "head's up" to the landlord that the tenants would be vacating sometime in December 2020.

The landlord submitted he called the tenants a couple of days later to find out if they had a specific date they were vacating, and on December 11th, the tenants said they were vacating by January 1, 2021. Then on December 15th, the tenants indicated by text they would move out on December 20th and spending Christmas at their new home. The tenants then texted on December 19th changed the move-out date and said the move-out date would be December 31st. On December 20th at 11:00 am, the tenants texted and said they would be out by 1:00 pm that day.

The landlord requested to retain the security deposit of \$900 as compensation for the insufficient notice.

Filed in evidence were the various text messages between the parties and an email.

The tenant said that she had a phone conversation with the landlord on December 8th, and that she and her family were in turmoil caused by the stresses of the pandemic. The text messages show that her family had a lot of changes happening very quickly, which caused the conversation on December 8th. On December 8th, the tenant said

they notified the landlord that December would be their last month and they were out of the rental unit by December 20th.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenants wanted to end the tenancy by the end of December or even by December 20th, the latest day the tenants could provide written notice to end the tenancy was November 30, 2020.

In this case, the tenants provided verbal and text message notices on various dates with various move-out dates provided to the landlord, beginning with a conversation on December 8, 2020. I therefore find the tenants were in breach of the Act.

The undisputed evidence is that the landlord was never provided sufficient or clear evidence of the exact date the tenants were vacating, and as a result, I find it reasonable that he was unable to secure new tenants for the following month. By failing to provide written notice by November 30, 2020, the tenants are obligated to pay the monthly rent for January 2021.

For the above reasons, I therefore find the landlord submitted sufficient evidence that the tenants failed to give a proper written notice that they were vacating, and that the said insufficient notice caused the landlord to suffer a loss of rent revenue for the following month of January 1, 2021. I therefore find the landlord is entitled to retain the tenants' security deposit of \$900, as claimed.

As the landlord was successful, I grant the landlord recovery of the filing fee of \$100.

Conclusion

The landlord's application has been granted.

The landlord is allowed to keep the tenants' security deposit of \$900 and the landlord is granted a monetary order in the amount of \$100, for recovery of the filing fee in this matter.

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: May 25, 2021

Residential Tenancy Branch