



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant under the Residential Tenancy Act (the “Act”) for a monetary order for compensation and the return of their filing fee. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence 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

- Is the Tenant entitled to monetary compensation under the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that the tenancy began on December 1, 2019, as a one-year fixed term tenancy that rolled into a month-to-month tenancy agreement at the end of the initial fixed term. That rent in the amount of \$3,150.00 was due on the first day of each month, and that the Landlord collected a security deposit of \$1,575.00. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that they gave notice to the Landlord on September 5, 2020, by email, to end their tenancy immediately due to the covid-19 pandemic, as they had to leave the country.

The Tenant testified that they had shared the rental unit with three other renters and that they are requesting the return of their portion of the rent, \$787.50 per month, for September and October 2020, in the amount of \$1,575.00

Analysis

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

The Tenant is claiming for compensation in the amount of \$1,575.00 to recover their paid rent for September and October 2020. Awards for compensation due to damage or losses 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.

In order to determine if the Tenant is entitled to the recovery of their rent for September and October 2020, I must first determine if there had been a breach of the *Act* by the Landlord. I accept the testimony of the Tenant that they issued written notice to the Landlord to end their tenancy on September 5, 2021, and that the Tenant paid their full rent for both September and October 2020. Section 45(1) of the *Act* states that a tenant can end their tenancy agreement by providing their Landlord with at least one clear rental period written notice.

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.

Based on when the Tenant issued their notice to end their tenancy to the Landlord, the earliest this tenancy could have ended, in accordance with the *Act*, was October 31, 2021. Therefore, I find that the full rent for September and October 2020 was legal due under this tenancy agreement, and the Landlord was within their rights to collect and retain the full rent for both the claimed periods.

Overall, I find that there is insufficient evidence before me to show that the Landlord breached the *Act* during this tenancy. Consequently, I dismiss the Tenant's application to recover their rent for September and October 2020.

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 Tenant has not been successful in their application, I find that the Tenant is not entitled to the return of their filing fee.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: August 13, 2021

Residential Tenancy Branch