



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, female landlord ("landlord") and "male landlord," and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 1:30 p.m. with me and the two tenants present. Both landlords called in late at 1:32 p.m., stating that their access code for the teleconference did not work. I informed the landlords about what occurred in their absence. The hearing ended at 2:31 p.m. This hearing lasted approximately 61 minutes.

The male landlord confirmed that he and his wife, the landlord, were both owners of the rental unit. He said that his middle name is used on the parties' tenancy agreement, rather than his first name, which is used on this application.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The two landlords and the two tenants all affirmed under oath that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord confirmed that she was told by the RTB to hire an English language translator if she required one, since the RTB did not provide translators for parties. The landlord stated that she did not want to hire a translator. I informed her that she could have a friend or family member participate in this hearing, if she required assistance with translation. She said that both landlords were able to understand English and participate in this hearing. She confirmed that I repeated information to both landlords throughout this hearing, in order to assist them.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and amendment. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and amendment.

The tenant confirmed that the tenants did not provide any documentary evidence for this hearing.

Preliminary Issue – Amendment of Landlords' Application and *Res Judicata*

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase their monetary claim from \$4,000.00 to \$4,040.00. The landlords provided an amendment with the increased monetary claim, which the tenants received.

During the hearing, I informed both parties that the landlords were not entitled to recover \$25.00 in copies and \$15.00 in postage, totalling \$40.00, for sending these hearing-related documents to the tenants. These claims are dismissed without leave to reapply. I informed both parties that the only hearing-related fees recoverable under section 72 of the *Act*, are for filing fees.

Both parties stated that they attended a "previous RTB hearing" for the landlords' application on March 11, 2021, and a decision, dated March 14, 2021, was issued by a different Arbitrator ("previous RTB decision").

Both parties agreed that the landlords filed an ex-parte review application of the previous RTB decision, alleging fraud, and it was dismissed by another Arbitrator in a decision, dated March 26, 2021 ("previous RTB review"). The file number for those decisions are on the front page of this decision.

Page 7 of the previous RTB decision states the following, in part:

I order that the landlord retain the above amount of \$465.44 from the security deposit of \$1,000.00 full satisfaction of the claim, this leaves a balance due of the security deposit in the amount of \$534.56. As, I have found the tenants did not extinguish their right to the security deposit, I find the landlord must return the balance due of the security deposit to the tenants forthwith. I grant the tenants a monetary order, should the landlord fail to comply with this order.

Both parties agreed that the Arbitrator at the previous RTB hearing ordered the landlords to retain \$465.44 from the tenants' security deposit and to return the remaining \$534.56 from the security deposit to the tenants. Both parties agreed that the Arbitrator provided a monetary order to the tenants for the above amount. Both parties agreed that the landlords still have not returned the tenants' security deposit, pursuant to the above order.

The landlords claimed that they applied to keep the tenants' security deposit again in this application, when they filed their amendment. They said that they were concerned that the tenants would not pay if the landlords received a monetary award for this current application, so they kept the security deposit for that reason.

I find that the landlords did not file an amendment to retain the tenants' security deposit, as this section of the amendment is not specifically selected. The landlords' request for the security deposit is simply included in the landlords' written description for a monetary order.

The landlords cannot apply again to keep the tenants' security deposit, since this matter is *res judicata*, as it has already been decided by an Arbitrator at a previous RTB hearing. I notified the landlords about this during the hearing, informing them that they are required to abide by that monetary order and that I could not change it. Both landlords began yelling at me when I gave them the above information.

The previous RTB decision states the following at page 5, in part:

Overhold premises

In this case the tenants were required under the Act to vacate the premise on December 31, 2020 at 1:00 pm. The tenants did not give the landlord vacant possession until January 2, 2021. While I accept the tenants were overholding the premise; however, that was for two days, as rent was paid for the month of December 2020, even though they are required to vacate by 1:00pm. I find the landlord is entitled to two days of rent in the total amount of \$132.00.

The landlords applied again for January 2021 rent of \$2,000.00, in this current application at this hearing. However, the landlords were previously awarded \$132.00 for two days of rent for January 1 and 2, 2021, at the previous RTB hearing. However, the landlords did not inform me of the above award during this hearing. This matter is also *res judicata*, as it has already been decided by an Arbitrator at a previous RTB hearing.

Preliminary Issue – Inappropriate Behaviour by the Landlords during this Hearing

Rule 6.10 of the RTB Rules states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout this hearing, both landlords were angry, upset and argumentative. The landlords repeatedly yelled at me and interrupted me, while I was speaking. The landlords also interrupted the tenant while she was speaking. The landlords became extremely angry and upset when I asked them questions about their application. They refused to answer many of my questions about their application.

I repeatedly cautioned the landlords, but they continued with this inappropriate behaviour. However, I allowed the landlords to attend the full hearing, despite their inappropriate behaviour, in order to allow them to present their application and respond to the tenants' submissions. This hearing lasted 61 minutes because of the landlords' repeated arguments, yelling and inappropriate behaviour.

Issues to be Decided

Are the landlords entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2020 and ended on December 31, 2020. The tenants cleaned, painted and repaired the rental unit until January 2, 2021. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month.

The landlords seek a monetary order of \$4,000.00 and to recover the \$100.00 application filing fee. The tenants dispute the landlords' application.

The landlord testified regarding the following facts. The tenants "cut the contract early" because they left on December 31, 2020, instead of March 1, 2021. The tenants owe two months of rent at \$2,000.00 for each month, totalling \$4,000.00, for January and February 2021.

The tenant testified regarding the following facts. The landlord is not named in the tenancy agreement, so the tenants have not dealt with her, only the male landlord. There was no lease agreement for one year, it was a month-to-month tenancy, as only this box was checked off in the tenancy agreement; this was also discussed between the tenants and the male landlord. The tenants paid cash rent to the male landlord every month. The tenants gave notice to the male landlord on November 22, 2020, by text message and verbally in person, that they were moving out on December 31, 2020, so this was more than enough notice because it was 39 days. The male landlord showed the rental unit to prospective tenants on December 12, 2020, while the tenants were still living in the rental unit.

The landlord stated the following in response to the tenant's testimony. The landlords checked off the wrong box in the tenancy agreement, indicating that this was a month-to-month tenancy. They thought it was talking about the payment of rent, which is monthly, not yearly, in advance. The landlords were confused and did not understand this section when they filled it out. The tenants said they were ending their lease earlier than one year, when the landlords received their text message on November 23, 2020, for them to move out on December 31, 2021.

During the hearing, the landlord read out section 2 of the parties' written tenancy agreement, which is on a standard RTB-1 form. She agreed that the tenancy began on March 1, 2020, and box A was checked off in section 2, indicating: "*and continues on a month-to-month basis until ended in accordance with the Act.*" She said that the landlords wrote "March 1, 2021," beside box C in section 2 indicating: "*and is for a fixed term ending on*" but the box was not actually checked off. She claimed that the landlords checked off box E, which states: "*At the end of this time, the tenancy is ended and the tenant must vacate the rental unit. This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.*" She agreed that the landlords did not provide a reason in section E, which states: "*Reason tenant must vacate (required):*"

Analysis

Credibility

I find that the tenant is a more credible witness, as compared to the landlords. The tenant provided her testimony in a calm, candid, straightforward, and consistent manner. She answered questions directly and she admitted when events were not favourable to the tenants' position.

Conversely, I find that the landlords were less credible witnesses. They provided their testimony in an angry, upset, and agitated manner. Their testimony was inconsistent and changed frequently throughout the hearing. They spent most of the hearing time yelling at me, interrupting me and the tenant, and refusing to answer my questions, particularly about the parties' written tenancy agreement.

Legislation and Rules

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlords failed to properly go through their claims and the documents they submitted.

The hearing lasted 61 minutes, so the landlords had ample opportunity to present their application. I repeatedly asked the landlords if they had any other information to add and if they wanted to respond to the tenant's submissions. I even asked the landlords what their claims were for and the amounts of such claims because they initially did not state these during the hearing. However, the landlords were more focussed on yelling at me and refusing to answer my questions, than they were on presenting their application.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

Rent Loss

I find that this was a month-to-month tenancy agreement between the parties. It is undisputed that the landlords drafted the written tenancy agreement and checked off the month-to-month tenancy box in section A.

I find that although the landlords indicated a fixed term tenancy end date, they did not check off the box in section C, and they did not indicate a required reason for ending the fixed term tenancy in section E.

I do not accept the landlord's explanation to be reasonable or credible, that the landlords were confused or did not understand section 2 of the tenancy agreement, regarding the term of the tenancy.

I find that the section 2 of the tenancy agreement, which is titled "beginning and term of the agreement" does not mention the payment of rent. The following section 3, which is titled "rent," discusses the payment of rent terms. The landlords filled out that section correctly, indicating that the tenant was required to pay rent of \$2,000.00 per month on the first day of each month. The landlords checked off the correct boxes in that rent section, including the services and facilities included in rent, and wrote additional information regarding the utilities payable and charges for additional occupants.

Subsection 45(1) of the *Act* sets out how tenants may end a periodic tenancy:

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.

During this hearing, the landlords agreed that they received notice from the tenants on November 23, 2020, that the tenants would vacate the rental unit by December 31, 2020. I find that this notice complies with section 45(1) of the *Act* above. The tenants provided more than one month's notice to the landlords, prior to the date when rent is due on the first of each month.

Although text message is not a permitted written method under section 88 of the *Act*, I find that text messages were the primary method of communication between the parties. The landlords agreed they received the text message, provided a copy of it, and I find that they acted on it by showing the rental unit to prospective tenants on December 12, 2020, as per the tenant's evidence. I find that the landlords were sufficiently served with the tenants' notice to end this tenancy, by text message, as per section 71(2)(c) of the *Act*.

Although the tenants stayed until January 2, 2021, to clean, paint, and repair the rental unit, the landlords were already awarded \$132.00 for two days of rent for January 1 and 2, 2021, at the previous RTB hearing, as noted above.

Further, the landlords did not indicate if or when any advertisements were posted for re-rental, if or when any inquiries were made, or if or when any applications were received from prospective tenants. They did not state if or when the rental unit was re-rented to new tenants, and if so, the term of such tenancy or the rent payable under that new tenancy. The landlords did not reference any documents they provided for this hearing, except the tenancy agreement and the text message from the tenants to move out.

I find that the landlords provided insufficient evidence to show that they were unable to re-rent the unit to new tenants and that they suffered a rent loss for two months. I find that the landlords failed to mitigate their losses.

For the reasons stated above, I dismiss the landlords' application of \$4,000.00 for two months' rent loss for January and February 2021, without leave to reapply.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

The landlords' entire application for \$4,140.00 is dismissed without leave to reapply.

The tenants' security deposit and the landlords' claim for a loss of rent for January 1 and 2, 2021, are *res judicata*, as they have already been decided by another Arbitrator at a previous RTB hearing.

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 27, 2021

Residential Tenancy Branch