



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

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

The tenant and landlords MH (the landlord) and AB attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for loss?

2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on September 01, 2019 and ended on September 01, 2021. Monthly rent was \$900.00, due on the first day of the month. At the outset of the tenancy the landlords collected a security deposit of \$450.00 and a pet damage deposit of \$200.00 (the deposits). The landlords returned the deposits. The tenancy agreement (form RTB1) was submitted into evidence. It states:

11. Occupants and pets

- (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

Both parties agreed the tenant paid an extra \$100.00 (the extra amount) per month for rent in January, February, March, April, May, August and September 2020, in the total amount of \$700.00.

The tenant is claiming compensation in the amount of \$700.00 because she overpaid rent. The tenant affirmed her boyfriend was an occupant in the months she overpaid rent and she offered to pay the extra amount. The monthly rent of \$900.00 was below the market rate and the tenant concluded that it was appropriate to offer the landlords an extra payment because she had an occupant.

The landlord stated the tenant offered to pay the extra amount. The landlord did not ask for the extra amount. The landlord testified that the tenant paid rent in the amount of \$900.00 some months when the occupant was in the rental unit and then the tenant offered again to pay the extra amount. The landlord said the market rate for the rental unit was \$1,400.00 and the landlord offered the rental unit at a lower rate because the tenant was having difficulty finding a rental unit and she was the only occupant of the rental unit.

The landlord submitted into evidence text messages with the tenant:

Tenant on December 18, 2019: Also, since you typically charge \$1,000.00 and gave me a deal we would pay you the full \$1,000.00 of course.

Landlord on May 27, 2020: ...also just pay regular rent moving forward ok

Tenant on August 30, 2020: I am willing to let him stay and move out on October 01 as long as that is ok with you? For August/September I can give you the extra \$100.00 too. What do you think?

Landlord on August 30, 2020: We don't mind if you are happy with that...

The tenant rented other units before this unit. The tenant has some post-secondary education. The tenant affirmed she learned the landlord could not require or accept any extra payment for occupants and then she submitted this claim. The tenant stated the landlords served a notice to end tenancy, she regrets that she did not dispute it and she regretted that she paid the extra amount.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 13 of the Act states:

(2)A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

[...]

(f)the agreed terms in respect of the following:

[...]

(iv)the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

Based on the undisputed testimony offered by both parties and the text messages, I find the tenant offered to pay the extra amount because she had a rent below the market rate and she concluded it was fair to pay the extra amount.

The landlord did not require the tenant to pay the extra amount and offered the tenant to pay the regular amount of rent on May 27, 2020. The tenant signed the tenancy agreement indicating that she did not have to pay the extra amount. The tenant rented other units before this tenancy. The tenant admits she regrets that she voluntarily paid the extra amount and that she did not dispute a notice to end tenancy.

Based on the testimony offered by both parties and the text messages, I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act.

I dismiss the tenant's claim.

As the tenant was not successful, the tenant must bear the filing fee.

Conclusion

I dismiss the tenant's application 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: February 14, 2022

Residential Tenancy Branch