



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MNDC MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 14, 2022.

The Landlords and the Tenants both attended the hearing and provided affirmed testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters – Service

The Tenants received the Landlord's Notice of Dispute Resolution Proceeding and evidence package by registered mail, shortly after it was sent in late March 2022. Proof of mailing was provided at the hearing. The Tenants acknowledge getting the above noted package and did not take issue with service.

The Tenants stated they sent their Notice of Dispute Resolution Proceeding and evidence package to the Landlords via email on April 14, 2022. The Landlords stated they never received this package from the Tenants. Both parties acknowledged that they did not have an agreement, up front and in writing, to serve each other via email.

I note the following portion of the Act regarding how an applicant must serve the respondent with this application package:

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (f) by any other means of service provided for in the regulations.*

The Tenants did not serve in any of the above methods, and only sent the Notice of Hearing by email, which the Landlords did not receive. I note the following Policy Guideline #12 with respect to the service of documents:

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service (see "Orders for substituted service" in section 13 below).

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email.

[...]

Email service

o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents.

If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

In order for the Tenants to serve the Landlords with their Notice of Hearing and evidence via email, the Tenants would have had to obtain an Order for Substituted service prior to this hearing, permitting him to serve the Landlords in a manner not specifically laid out under

section 89 (1) above, or the Tenants could have sent this documentation by email if there was sufficient evidence to show the Landlords specifically provided their email address to the Tenants as their address for service. Typically this would be done expressly, and in writing. No Substituted Service Order was applied for, and there is no evidence to show the Landlords specifically gave the Tenants their email address for service purposes.

Ultimately, I find there is insufficient evidence that the Landlords were served in accordance with any of the allowable methods of service under section 89 of the Act. I dismiss the Tenants' application for lack of service, and I find the Tenants' evidence is not admissible, as it has not been sufficiently served.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities or for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

The Landlords stated that monthly rent was set at \$1,770.00 and was due on the first of the month. A copy of the tenancy agreement was provided into evidence showing that that Tenants were under a fixed term tenancy agreement until March 31, 2022. The Landlords collected a security deposit and pet deposit, totalling \$1,750.00.

The Landlords confirmed that they served the Tenants with a 2-Month Notice to End Tenancy for Landlord's Use mid-January 2022, with an effective date of March 31, 2022, because the purchaser of the property wanted vacant possession of the house. The parties indicated on their applications that the tenancy ended on or around March 12, 2022, when the Tenants moved out. At the end of the tenancy, the Landlords returned \$618.00 of the deposits, which the Tenants acknowledge getting on or around March 15, 2022.

The Landlords filed this application on March 14, 2022, only 2 days after the tenancy ended. They stated they are seeking the following items on their application:

- 1) \$1,082.00 – Rent

The Landlords explained that the Tenants were supposed to move out on March 31, 2022. However, they ended up moving out part way through March, and they only paid \$688.00 for the first half of that month. The Landlords stated that they were approached

by the Tenants in February, and the Tenants asked the Landlords if they could have February as their free month's worth of rent, pursuant to the 2-Month Notice, rather than March. The Landlords stated they agreed to this, and the Tenants didn't pay any rent for February 2022, as agreed. The Landlords stated that in March, the Tenants were supposed to pay full rent for the month. However, they only paid \$688.00, which was for the first 12 days of the month, up until the time they moved out.

The Landlords are seeking \$1,082.00, which is the remainder of March rent, because they never agreed to allow the Tenants to move out before the end of the tenancy, and because no other legal or valid Notice was given by the Tenants. The Landlords provided copies of some of the text messages corroborating that they agreed to let the Tenants withhold February rent, rather than March. The Landlords stated that the Tenants never gave any formal notice nor did they properly communicate that they would be leaving early.

The Tenants stated that they have text messages with the Landlords whereby they agreed to allow the Tenants to move out without having to provide a full month's notice, since the house was being sold. However, these text messages were not admissible as evidence. The Landlords do not agree that they authorized the Tenants to move out part way through the month, without giving notice, and only paying a per diem rent for the days they stayed. The Tenants stated they were under the impression that it was okay for them to move out part way through March based on conversations they had with the Landlords.

2) \$50.00 – Cleaning costs

The Landlords are seeking this amount because the Tenants failed to clean up the rental unit before they moved out.

The Tenants agree that to this charge and do not dispute that they owe this.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I turn to the first item on the Landlords' application:

1) \$1082.00 – Rent

I note the Tenants were under a fixed term tenancy agreement, expiring March 31, 2022. The Landlords provided a 2 Month Notice to the Tenants in January, and this Notice had an effective date of March 31, 2022, which is the last day of the fixed term agreement. Although the Tenants assert they were given permission by the Landlords to move out early, and without providing the standard amount of advance notice, the Landlords do not agree. The Landlords assert they never gave permission for the Tenants to only pay for part of March rent.

It is not in dispute that the Tenants received February 2022 rent, as their free one month compensation pursuant to the 2 Month Notice. It is also not in dispute that the Tenants only paid \$688.00 for March, which is per diem amount of rent for the 12 days they were in the rental unit in March. I note the Landlords are seeking the balance of rent they feel they were owed for March in the amount of \$1,082.00.

Having reviewed the testimony and evidence on this matter, I note there is no evidence that the Tenants provided any formal written notice to the Landlords that they wanted to vacate early, pursuant to section 50(1)(a). In order for the Tenants to end the tenancy early, pursuant to section 50(1)(a), and after receiving a 2 Month Notice, they had to provide notice to the Landlords, in writing. In this case, there is insufficient evidence that this was done, and I find the Tenants lacked the legal basis to end the tenancy effective March 12, 2022, without liability for the full month's rent. I find the Tenants are liable for this item, in full.

2) \$50.00 – Cleaning fee

I note the parties agreed in the hearing that the Tenants owed this amount. I award this item in full.

Since the Landlords were successful in this application, I award the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act. In total, I award the Landlord \$1,232.00.

I authorize the Landlords to retain the remaining deposits they currently hold in the amount of \$1,132.00, in partial satisfaction of the money owed, which I find leaves a balance owing to the Tenants in the amount of \$100.00. I will issue a monetary order for this amount.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$100.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: November 15, 2022

Residential Tenancy Branch