



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 tenants applied for:

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

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Are the tenants 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 April 29, 2022 and ended on August 12, 2022. Monthly rent was \$2,000.00, due on the first day of the month. The landlord collected and returned the \$1,000.00 security deposit (the deposit). The tenancy agreement was submitted into evidence.

Tenant WC (the tenant) affirmed that on July 12, 2022 the parties verbally agreed to end the tenancy and signed the mutual agreement to end tenancy dated July 06, 2022 (submitted into evidence) to end the tenancy on August 16, 2022.

The tenant stated that the landlord agreed to pay the tenants \$9,000.00 to end the tenancy and issued one cheque of \$5,000.00 dated July 12, 2022 and another cheque of \$4,000.00 dated August 18, 2022, plus the return of the deposit and April 2023 prepaid rent (the prepaid rent). The tenant was able to cash the \$5,000.00 cheque but not the \$4,000.00 cheque.

The tenant is seeking an order for the payment of \$4,000.00.

The landlord testified the verbal agreement included a compensation of \$5,000.00, the return of the prepaid rent, the deposit and an extra payment of \$1,000.00.

Both parties agreed the landlord returned the deposit and the prepaid rent in August 2022 and the tenants cashed the \$5,000.00 cheque.

The landlord said she cancelled the \$4,000.00 cheque because she decided to electronically pay the tenants the prepaid rent and the deposit in the total of \$3,000.00 and not to pay the extra payment of \$1,000.00, as the landlord was not happy with the rental unit's conditions. Later the landlord affirmed that she also decided to not pay the \$1,000.00 extra payment because she feels the tenants were not nice.

Both cheques were submitted into evidence. They are signed by the landlord, addressed to the tenant and reference "memo: for [rental unit's address]".

The tenant submitted to move out condition inspection report. It indicates that both parties agreed the rental unit was in good condition when the tenancy ended.

The tenant submitted an email sent to the landlord on August 30, 2022:

We are writing to request a cheque for our remaining portion of the early-move-out notice compensation (CAD 4,000).

As agreed on July 12 2022, you will provide CAD 9,000 as compensation for a 1-month, early-move-out notice. We received 2 cheques on 12 July 2022 and chased them directly. Unfortunately one of the cheques (cheque no. 66, CAD 4,000) was unable to be cashed. We tried cashing the cheque on August 18, 2022, as suggested by you and your real estate agent [redacted] again but the transaction failed to go through. I have attached the written notification from the bank on the failed transaction for your reference.

Please let me know if you need further assistance or information for you to issue the cheque. If we do not hear from you within 24 hours, we will assume that the agreement has been breached by you and further actions will be taken from our side.

The tenant submitted a monetary order worksheet indicating a claim of \$4,000.00.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

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 or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, 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.

Based on the testimony of both parties, I find the parties agreed to end the tenancy early and the landlord agreed to pay the tenants a monetary compensation.

The point at issue is whether the landlord agreed to pay the tenants \$9,000.00, plus the return of the deposit and the prepaid rent, as the tenants claim, or \$5,000.00 plus the return of the deposit, the prepaid rent and an extra \$1,000.00, as the landlord claims.

The parties offered conflicting testimony about the conditions of the verbal agreement. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The cheques and the mutual agreement to end tenancy submitted into evidence do not contain information about the verbal agreement. The email sent on August 30, 2022 was not answered by the landlord. I find that an unanswered email is not enough to prove the tenants' claims, as the landlord denied during the hearing that she agreed to the tenants' agreement conditions.

The applicant tenants did not provide enough documentary evidence to support their claim. Thus, based on the landlord's testimony, I find the landlord proved, on a balance of probabilities, that she verbally agreed to pay the tenants compensation of \$5,000.00, the return of the prepaid rent, the deposit and an extra payment of \$1,000.00. I note that this amount is smaller than the amount claimed by the tenants.

Based on the undisputed testimony, I find the landlord paid \$5,000.00, returned the prepaid rent and the deposit.

The move out condition inspection report indicates that both parties agreed the rental unit was in good condition when the tenancy ended. The parties did not agree that the landlord could cancel the \$1,000.00 extra payment if the landlord was not happy with the rental unit's conditions or if the tenants are not nice. I find the landlord breached the verbal agreement by not paying the extra payment of \$1,000.00.

As such, I order the landlord to pay the tenants \$1,000.00.

The tenants are entitled to recover the filing fee, as they were partially successful in this application.

In sum, the tenants are entitled to \$1,100.00.

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the tenants a monetary order of \$1,100.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord 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: June 16, 2023

Residential Tenancy Branch