



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCL, FFL**

Introduction

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

1. A Monetary Order for compensation for a monetary loss or other money owed under Section 67 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. One Landlord, SJL, and the Tenant, CH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on September 16, 2022 by Canada Post registered mail (NoDRP package). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on September 21, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order for compensation for a monetary loss or other money owed?
2. Are the Landlords entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term ended on June 30, 2022, and the tenancy ended on this date. Monthly rent was \$1,300.00 payable on the first day of each month. A security deposit of \$650.00 was collected at the start of the tenancy and the Landlord testified they returned it to the Tenant.

On June 28, 2022, the Landlord stated they saw a moving truck in the driveway, as well as many items that belonged to the Tenant. The Landlord claimed they had not received any notice that CH was vacating. The Landlords are claiming one month's rent as they needed time to find another tenant.

Section 1.1 of the uploaded tenancy agreement states:

- 1.1 *It is understood that the tenancy ends at the expiry of the fixed term and the tenant **must vacate** the premises. **This requirement is only permitted in circumstances prescribed by the Residential Tenancy Regulations.***

Reason Tenant must vacate: Landlord use of property

This provision was initialled by both parties.

Section 8 of the tenancy agreement states:

RIGHT TO RENEW

8. *If a further term is agreed upon between the Landlord and the Tenant, the tenant may renew this Tenancy Agreement with the same terms and*

conditions as contained herein EXCEPT for rent which shall first be agreed to in writing. The Tenant shall exercise the Tenant's right to renew hereunder by giving written notice of the Tenant's intention to renew to the Landlord at least three (3) months prior to the expiration of the Term.

The Landlord uploaded a condition inspection report for the new tenant who began his tenancy with the Landlord on July 27, 2022.

The Tenant testified that prior to the three-month mark before the end of the tenancy, the Tenant reached out to the property manager and informed them that she wanted to continue the tenancy on a month-to-month basis. The property manager said they needed to speak to the Landlords. XJL came to the rental unit, and the Tenant asked to continue the tenancy on a month-to-month basis. XJL told the Tenant that a month-to-month basis tenancy was not an option, the Landlords wanted a year's lease. The Tenant told XJL that she could not commit to one year.

On June 30, 2022, the Tenant did the move-out condition inspection with the Landlord. The Landlord returned the whole security deposit to the Tenant. The Tenant said she followed the tenancy agreement to a 'T'.

The Landlord argued that she did not attend the rental unit three months before the end of the fixed term, and the Tenant did not speak to her. XJL said the Tenant lies.

The Tenant stated she really loved the rental unit, and the location would have been wonderful to stay at during the summer months. The Tenant did not have agreement from the Landlords to continue the tenancy on a month-to-month basis, so she vacated the rental unit according to the tenancy agreement.

Analysis

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 their case is on the person making the claim.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 Landlord alleges the Tenant did not provide her with notice that she was vacating the rental unit. The Tenant stated she followed the terms of the tenancy agreement and she had tried to negotiate going month-to-month after the end of the fixed term, but the Landlord did not agree. The Tenant testified that the tenancy agreement stated, “*It is understood that the tenancy ends at the expiry of the fixed term and the tenant **must vacate** the premises. Reason Tenant must vacate: Landlord use of property*” The Tenant vacated the rental unit at the end of the fixed term.

I find the Tenant did not fail to comply with their tenancy agreement. On the date noted as the end of the fixed term, the Tenant was required to vacate, and she did. I do note that the Landlords did not use the rental unit as they stated they would according to the tenancy agreement.

Based on the testimony of the parties, and the documentary evidence uploaded, I find the Landlords are not entitled to the compensation they seek. I dismiss the Landlords’ application.

As the Landlords were unsuccessful in their claim, they must bear the cost of the application filing fee.

Conclusion

The Landlords' application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 13, 2023

Residential Tenancy Branch