



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 20, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant M.D. as well as the Landlord appeared at the appointed time of the hearing and provided affirmed testimony.

M.D. testified that he served the Landlord with the Application package and documentary evidence by registered mail on November 24, 2018. The Landlord confirmed receipt. In return, the Landlord testified that he served his evidence to the Tenants by express post; however, he could not recall the exact date of the mailing. M.D. confirmed receipt. Therefore, pursuant to Sections 88 and 89 of the Act, I find the Application package and documentary evidence were sufficiently served between the parties for the purposes of the Act.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the fixed term tenancy began on September 1, 2017 and was meant to end on September 1, 2018. Rent in the amount of \$1,500.00 was due to the Landlord by the first day of each month. A security deposit in the amount of \$750.00 and a pet deposit in the amount of \$750.00 were paid to the Landlord. A tenancy agreement between the parties was submitted by the Tenants in support. The tenancy ended on October 5, 2018.

M.D. testified that the Landlord approached the Tenants in August 2018 expressing his interest on listing the property for sale. M.D. stated that the Tenants understood this to mean that the rental unit would be sold and that their tenancy may end if the new owner wished to occupy the rental unit. M.D. stated that the Tenants began looking for a new residence and moved out of their rental unit on October 5, 2018 as they did not want to be interrupted by constant showings, or be at the mercy of the new home owner.

M.D. testified that two weeks after moving, he returned to the rental unit to find that the Landlord had re rented the rental unit. M.D. stated that the Tenants feel as though they were misled to believe that the property would be sold.

The Tenants are seeking compensation in the amount of \$4,128.24 in relation to moving expenses, cleaning costs and loss of earnings relating to the move. The Tenants provided receipts in support.

In response, the Landlord confirmed that he notified the Tenants that he wished to list his property for sale, as he felt they may want to put in an offer to buy the house. The Landlord provided email discussion between the parties in support.

The Landlord testified that he did not serve any formal notice to end tenancy, nor did he end up listing the property for sale. The Landlord confirmed that the tenancy ended on October 5, 2018. The Landlord testified that he took steps to re rent the rental unit and found a new tenant to move in on October 15, 2018.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

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

With respect to the Tenants' claim seeking compensation for loss in the amount of \$4,128.24, I find that the Tenants have not demonstrated that the Landlord has breached any particular section of the *Act* or tenancy agreement. I accept that the parties had a discussion about the Landlord's intent on listing the rental unit for sale, however, the listing of the property never materialized. I find that the Landlord did not serve any formal notice to end tenancy, therefore, the Tenants were not obligated to end their tenancy but chose to do so regardless. I dismiss the Tenants' claim for compensation relating to loss, without leave to reapply.

Seeing as the Tenant was not successful in their Application, the Tenant is not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenants' Application for a monetary order for compensation, 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: March 19, 2019

Residential Tenancy Branch