



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent (the "landlord") and tenant C.I. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

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

Both parties confirmed their email addresses for service of this decision and order.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2019. At the time the tenancy ended the tenancy was on a month to month basis. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord returned \$728.00 of the deposit at the end of this tenancy. The subject rental property is an apartment in an apartment building.

The tenant testified that he moved out of the subject rental property on November 27, 2020. The tenant testified that he attended at the property after that date to clean the subject rental property. Both parties agree that the tenant returned the keys to the landlord on December 23, 2020.

Both parties agree that on November 10, 2020 a fire started in another unit of the subject rental building, the subject rental property was not damaged in the fire but smoke/fumes were present. The tenant testified that he was advised by a firefighter to spend the night elsewhere due to the smoke and the fact that he has a two-year-old child. The tenant testified that he spent that night at a hotel.

Both parties agree that on November 16, 2020 one of the drying machines used to dry out areas affected by the fire, caught fire.

Both parties agree that on November 19, 2020 a boat in the parkade of the subject rental building was set on fire.

The tenant testified that the constant fires in November of 2020 was upsetting and he worried for the safety of his child. The tenant testified that the landlord did not hire security guards for the subject rental property until after the third fire. The tenant

testified that he decided to move out of the subject rental building because it was unsafe for his family.

Both parties agree that near the end of November 2020 the tenant verbally told the landlord of his intention to move out of the subject rental property because of the safety risk posed by the fires. Both parties agree that the tenant gave, and the landlord received, written notice to end tenancy on November 29, 2020.

Both parties agree that the landlord informed the tenant that they would have to pay December 2020's rent. Both parties agree that the tenant paid December 2020's rent. The tenant testified that he is seeking the landlord to return December 2020's rent in the amount of \$1,600.00 because the tenant only moved out because of the fires and the failure of the landlord to keep him informed about the fires and what steps the landlord was taking to keep the tenants safe. The tenant testified that there was no action from management, and a complete lack of communication about what was going on.

The agent testified that the RCMP told her not to discuss the details of the fires with other people because the investigation was ongoing. The agent testified that a security guard was hired after the second fire but this did not prevent the third fire from occurring. The agent testified that she put messages in the lobby regarding the security hired after the second fire. The tenant testified that a few messages in the lobby was not adequate communication about the fires.

The agent testified that the fires, which were not caused by the landlord, do not change the rules for ending a tenancy and that the tenant is still required to give one full month's notice and so is responsible for December 2020's rent.

Analysis

Section 45 of the *Act* sets out how a tenant may end a tenancy.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline #5 explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the *Act*, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Residential Tenancy Policy Guideline # 3 states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In this case, contrary to section 45(1) of the *Act*, less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenants were permitted to end the tenancy was December 31, 2020.

Section 45(3) of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The tenant did not enter into evidence a breach of material term letter. I find that the tenant failed to provide the landlord with written notification that the conduct (or lack of communication) of the landlord constituted a breach of a material term of the tenancy agreement. I therefore find that the tenants were not entitled to end the tenancy early under section 45(3) of the *Act*.

As the tenants were not entitled to end this tenancy earlier than the timelines set out in section 45(1) of the *Act*, I find that the tenants are responsible for December 2020's rent. The tenant's application for dispute resolution is therefore dismissed without leave to reapply.

As the tenants were not successful in this application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*

Conclusion

The tenant's application is dismissed 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: May 26, 2021

Residential Tenancy Branch