



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

On March 1, 2022, the landlord was granted a substitutional service order to be allowed to serve the tenant with the Application for Dispute Resolution and Notice of Hearing and supporting evidence by email.

The landlords testified the Application for Dispute Resolution, Notice of Hearing and attached evidence was sent to the tenant by email on March 12, 2022. Filed in evidence is a copy of the email showing the said document were attached. I find the tenant was deemed served on March 15, 2022, three days after the email was sent.

Issues to be Decided

Are the landlords entitled to a monetary order for loss of rent?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

On January 3, 2022, the parties entered into a one year fixed term tenancy that was to begin on February 1, 2022. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenant paid a security deposit of \$725.00.

The landlords testified even before the tenancy was to begin on February 1, 2022, they had given the tenant permission to move some of their belongings into the rental unit. The landlords stated on January 29, 2022, they conducted the move-in condition inspection report with the tenant.

The landlords testified that on January 30, 2022, they received a text message from the tenant stating that their son would be by to collect their belongings. The landlord stated that when the tenant's son came, he wanted to see their service records for the heating system and indicated they believed it was unsafe. The landlords stated that there was nothing wrong with the heating system the rental unit was nice and warm. However, they had a professional come to the premises the following week because they also have family living in the premises and wanted to ensure it was in good working order, which it was found to be working properly.

The landlords testified on February 4, 2022; they received another message from the tenant confirming they were not moving in. The landlords stated that they really don't know why the tenant made the decision not to move into the premises and it may be that the tenant decided to live with their son; however, they loss rent for February and March 2022.

The landlords testified because February 4, 2022, was the first time the tenant actually stated that they would not be moving in they advertised the rental unit on February 6, 2022, and by the time they found a new suitable renter, who also had to give notice to end their tenancy; the tenancy could not commence until April 1, 2022. The landlords seek to recover loss of rent for February and March 2022, in the amount of \$2,800.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 16 of the Act states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 (2) of the Act states, a tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the parties entered into a tenancy agreement that was to commence on February 1, 2022, although the tenant was given permission to move some of their belongings into the rental unit early.

On January 29, 2022, the tenant and landlords completed a move-in condition inspection report. The report does not show that there were any issues with the heating system.

On January 30, 2022, before the tenant even had legal possession of the rental unit, they informed the landlord that their son would be picking up their belongings, which the son of the tenant did. On this day the tenant's son raised the issue of the heating, which makes no sense as this was not an issue at the move-in condition inspection that occurred the day previous. I find it more likely than not that the tenant had other reasons for ending the tenancy.

Further, the tenant's obligation under the Act took effect the day they entered into the tenancy. I find even if there was a problem with the heating system, which there was not, they were required to notify the landlord in writing that a problem existed and give the landlord a reasonable amount of time to make the repair. This was not done by the tenant.

On February 4, 2022, the tenant confirmed they were not moving into the premises as they claimed it was unsafe; however, this was not true as the landlord had the heating system inspected. I find the tenant was not entitled to end the tenancy until their one year fixed tenancy expired. I find the tenant breached the Act when they failed to take possession of the rental unit on February 1, 2022.

Since the tenant failed to comply with the Act the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenant had not breached the Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlords was on February 4, 2022, the tenant confirmed they would not be moving into the premise. The landlords advertised the rental unit on February 6, 2022 and found a new suitable tenant to take over the rental unit commencing April 1, 2022. I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover loss of rent for February and March 2022 in the amount of **\$2,900.00**.

I find that the landlords have established a total monetary claim of **\$3,000.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$725.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$2,275.00**. **I authorize the landlord to serve the monetary order by substituted service at email address for the tenant.** I have noted the tenant's email address on the covering page of this decision.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: October 31, 2022

Residential Tenancy Branch