



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT (Tenants)
 MNRL, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenants filed their application February 17, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Landlords filed their application May 09, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- To recover unpaid rent
- For reimbursement for the filing fee

The Tenant and Landlords appeared at the hearing. The Tenant appeared for Tenant N.A. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?
3. Are the Landlords entitled to recover unpaid rent?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 15, 2021, and was for a fixed term ending December 31, 2021. Rent was \$2,600.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit.

Tenants' Application

The Tenants sought the following compensation:

Item	Description	Amount
1	June 2021 rent	\$1,300.00
2	Cost of furniture	\$3,150.00
3	Six months of rent for Landlords breaking lease	\$15,600.00
4	Filing fee	\$100.00
	TOTAL	\$20,150.00

The Tenants sought compensation because their position is that the Landlords broke the lease and ended the tenancy agreement prior to the end of the term. The Tenant testified that the Landlords complained about the noise the Tenants and their children made from the start of the tenancy. The Tenant testified that the Landlords were not happy having the Tenants living in the rental unit and they watched the Tenants and their children. The Tenant testified that the Landlords were rude to their children and

called the police about the Tenants' children. The Tenant took the position that the Landlords asked the Tenants to leave and forced them to leave the rental unit. The Tenant testified that the Landlords forced the Tenants to leave by shouting at their children, calling the police, making noise every day and sending several text messages about the Tenants leaving the rental unit. The Tenant submitted that the Landlords breached the tenancy agreement by asking the Tenants to leave the rental unit and breaching the term of the tenancy agreement.

The Tenants sought return of the \$1,300.00 they paid in rent for June 2021.

The Tenant said they are seeking \$15,600.00 because they were told the Landlords must pay out the remainder of the tenancy agreement because they breached the agreement.

The Tenant said they are seeking \$3,150.00 for furniture because they did not have furniture when they moved into the rental unit, the rental unit was furnished and their new rental unit was not furnished.

The Landlords agreed they called the police and said the Tenants, or their children, were looking in the Landlords' bedroom window. The Landlords testified that after the police attended, the Landlords told the Tenants it was best if they moved out of the rental unit. The Landlords said the Tenants refused to sign paperwork ending the tenancy. The Landlords testified that they then served the Tenants with a Two Month Notice for the end of the tenancy term. The Landlords said, at that point, they thought the Tenants would stay until December 31, 2021, because the Tenants did not want to terminate the tenancy. The Landlords testified that the Tenants then did vacate the rental unit June 21, 2021, without any formal termination of the tenancy. The Landlords testified that they never received a breach letter from the Tenants.

In reply, the Tenant agreed they moved out of the rental unit June 21, 2021. The Tenant agreed they did not give the Landlords notice about breaching a material term of the tenancy agreement.

Landlords' Application

The Landlords sought the following compensation:

Item	Description	Amount
1	Unpaid rent	\$2,600.00
2	Filing fee	\$100.00
	TOTAL	\$2,700.00

The Landlords sought rent for July because the Tenants moved out June 21, 2021, and the Landlords had to clean the rental unit, fix things in the rental unit and advertise the unit for rent again. The Landlords testified that they found a new tenant for August of 2021, who paid the same rent amount as the Tenants. The Landlords testified that they were not yet ready to move into the rental unit when the Tenants moved out in June. The Landlords sought loss of rent because the rental unit was empty for July 2021.

The Tenant testified that they returned to the rental unit July 02, 2021, and someone was living in the rental unit. The Tenant denied that they damaged the rental unit and questioned why the Landlords sent the security deposit back if the rental unit was left damaged. The Tenant testified that they did not break the lease, the Landlords told the Tenants to leave, and the Tenants did so.

I have reviewed the evidence submitted. The most compelling evidence I have relied on includes photos, videos and text messages.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine 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.

Section 44 of the *Act* states:

44 (1) A tenancy ends only if one or more of the following applies...

(c) the landlord and tenant agree in writing to end the tenancy

I find based on the text messages that the parties agreed in writing to end this tenancy June 21, 2021. The Landlords offered to allow the Tenants to end their tenancy without notice in a text message sent Friday, June 18, 2021. The first offer asked for a response by Sunday. The Tenant declined this offer in their reply text message. The Landlords then said they would give the Tenants their rent and security deposit back. The Tenants agreed to think about the offer. On Saturday, June 19, 2021, the Landlords clarified that the offer was that they would refund the Tenants' full rent if they moved out by the end of the week. The Landlords said that after the end of the week, they would give a prorated amount of the rent back until the end of June. On Monday, June 21, 2021, the Tenants accepted the offer by text message. The evidence shows that the Tenants had moved out of the rental unit June 21, 2021. I find the Landlords accepted the Tenants' moving out in their reply text message on June 21, 2021. I find the tenancy ended pursuant to the offer and acceptance of the parties, in writing, by text message. It was not necessary for the parties to sign the RTB form ending the tenancy.

I do not find what occurred between the parties in person after the offer and acceptance relevant. The parties had come to an agreement and were bound by this agreement.

It was open to the parties to agree to end this tenancy, and this is what the parties did. The parties agreed to end the tenancy June 21, 2021. The tenancy did in fact end June 21, 2021, with the Tenants moving out. Neither party breached the tenancy agreement or *Act* by agreeing to end the tenancy.

Given the agreement reached over text message, I accept that the Tenants are entitled to prorated rent for the days they did not live in the rental unit being June 22-30, 2021. The Tenants are entitled to \$779.94 ($\$2,600.00 / 30 \text{ days} = \$86.66 \text{ per day} \times 9 \text{ days} = \779.94) back and I award the Tenants this amount pursuant to section 67 of the *Act*.

The Tenants are not entitled to further compensation because they agreed to move out of the rental unit. The Landlords did not force the Tenants to move out of the rental unit. The Landlords made the Tenants an offer to move out and the Tenants accepted this offer. The Tenants chose to move out and therefore are not entitled to further compensation. Further, the Tenants are not entitled to return of all of June rent pursuant to the agreement reached between the parties and set out in the text messages.

In relation to the Landlords' request, they are not entitled to compensation for loss of rent for July because they agreed to the Tenants moving out without notice. It is clear from the text messages that the Landlords offered to allow the Tenants to end the tenancy early without notice, the Tenants accepted this offer and the Landlords were fine with this agreement. The Landlords cannot now decide they want loss of rent for July when they agreed to the Tenants moving out June 21, 2021. I also note that I do not accept that anything needed to be cleaned or fixed in the rental unit because the evidence shows the rental unit was left in very good condition. The Landlords' claim is dismissed without leave to re-apply.

Given the Tenants have been partially successful in their application, they are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Tenants are issued a Monetary Order for \$879.94 pursuant to section 67 of the *Act*.

Conclusion

The Tenants are issued a Monetary Order for \$879.94. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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 *Act*.

Dated: November 09, 2022

Residential Tenancy Branch