



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order for unpaid rent and utilities.

The hearing was held by teleconference and both the landlord and the tenant participated.

At the start of the hearing, the tenant asked if I had received her evidence she submitted this morning. I advised that I had not received it and even if I had, I could not consider the documentary evidence as it fell outside of the timelines for service in the Residential Tenancy Rules of Procedure.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for utilities; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 45, 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on May 14, 2005 as a 1 year fixed term tenancy that converted to a month to month tenancy on June 1, 2006 for a monthly rent, at the end of the tenancy in the amount of \$1,100.00 per month due on the 1st of the month. The tenant moved out of the rental unit on October 7, 2009.

The landlord submitted into evidence the following documents:

- A copy of a cheque from the tenant dated October 1, 2009 to the landlord in the amount of \$1,100.00 with "Payment Stopped" stamped on the face of the cheque;
- A copy of the tenancy agreement, signed by the parties on May 1, 2005;
- A copy of an email to the tenant from the landlord dated September 29, 2009 advising the tenant to address two issues of concern, oil in the driveway and uncleaned windows. The note states that if the tenant ignores the issues the

landlord will have to cancel the tenancy agreement. The note further gives the tenant until October 7, 2009 to correct the problems.

- A copy of an undated handwritten note from the tenant to the landlord stating that she has accepted the landlord's deadline and moved out of the rental unit by October 7, 2009 and agreed to leave her security deposit to clean the driveway and windows; and
- A copy of an undated handwritten note from the landlord to the tenant offering to settle the matter. The tenant in her testimony indicated that she had not received any such settlement offer other than in the evidence package.

The landlord testified that the tenant left the rental unit on or before October 7, 2009 and had left the keys at that time. He stated that he was unable to find a tenant to start a tenancy until December 1, 2009. He stated that the rental unit required repairs that made it unavailable for rent for a month and a half.

The landlord indicated that he had advertised the rental unit on "Craig's List" as of October 10, 2009 and put a sign on the road but did not advertise anywhere else. The landlord provided no evidence supporting his claim to utilities.

The tenant testified that she had been harassed for the duration of the tenancy of 5 years by the landlord on many occasions. She stated that he physically intimidated her and often shoved his way into her rental unit. She further stated he had failed to repair a furnace one winter prior to him leaving the country for 5 months, even though she had told him about the problem. She also testified that the landlord continually condemned her choice of vehicles.

The tenant felt that the email dated September 29, 2009, which the landlord also sent via regular mail, was a notice to end the tenancy and left the rental unit. She stated that she incurred substantial expense in having to move, including signing a lease for a more expensive rental unit.

Analysis

The tenancy agreement states the tenant is responsible for hydro and gas utilities. The landlord, in his application, is claiming \$761.34 for utilities, but has provided no evidence to support this claim or to explain why this money is owed to the landlord when the utilities are to be the tenant's responsibility outside of the tenancy agreement. I dismiss this portion of the landlord's application with leave to reapply.

Section 47 of the *Act* allows a landlord to end a tenancy if a tenant or person permitted on the property by the tenant has caused extraordinary damage to a rental unit or residential property. In order to end the tenancy, however, the landlord must allow the tenant reasonable time to repair any damage to the rental unit or property.

If issuing a Notice to End Tenancy in compliance with Section 47, the landlord must provide the notice as required in Section 52 of the *Act*. This means the notice must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy; and be in the approved form. No notice compliant with Section 52 was issued by the landlord to the tenant.

Section 45 of the *Act* allows a tenant to end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that the rent is payable. No notice compliant with Section 45 was issued by the tenant to the landlord.

As the landlord did not issue a notice to end tenancy and the tenant did not provide notice to the landlord until she had actually left the rental unit on October 7, 2009, I find the tenant is responsible for rent for October and November 2009.

Section 7 of the *Act* requires that a party claiming compensation for damage or loss under the Act must do whatever is reasonable to minimize the damage or loss. I am not persuaded by the landlord's claim that he had substantial work to complete in the rental unit prior to making it available for a new tenant. The landlord had over 3 weeks in October to prepare the unit.

As well, I am not convinced the landlord did whatever was reasonable to advertise the rental property. By listing the availability only with one advertiser I find the landlord failed to adequately mitigate his losses, as such I find the tenant is not responsible for rent for November 2009.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I therefore grant a monetary order in the amount of **\$1,150.00** comprised of \$1,100.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: February 08, 2010.

Dispute Resolution Officer