



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord to retain the security deposit and a monetary order for loss of rent stemming from the tenant ending the tenancy without proper notice under the Act.

Despite being served by registered mail sent on July 19, 2010, the respondent did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of one month rent due to the tenant not complying with the tenancy agreement by moving in and paying rent on the date specified or giving the required amount of notice to end the tenancy.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rent owed under the agreement
- Whether the landlord is entitled to retain the total of \$725.00 security and pet damage deposits in partial satisfaction for the rent owed.

Background and Evidence

The landlord testified that a tenancy agreement was signed on June 14, 2010 for a tenancy that was scheduled to start on July 1, 2010 with rent set at \$725.00. A security deposit of \$362.50 and pet damage deposit of \$362.50 were paid by the tenant. The landlord submitted into evidence a copy of the tenancy agreement. The landlord stated that after the agreement was signed, the tenant had requested and was given a second viewing on June 23, 2010 and at that time had requested that the unit be repainted. The landlord testified that this request was granted, but due to the July statutory holiday

the tenant was advised that it would need to be completed after the move-in date. The landlord testified that the tenant then decided that she would not be moving into the unit and had evidently found another place to live. The landlord submitted the tenant's letter dated July 7, 2010 asking for a refund of the security deposit and pet damage deposit in the amount of \$725.00.

The landlord's position is that the tenant did not give sufficient notice to end the tenancy and therefore would still owe \$725.00 rent for July 2010. The landlord was seeking to retain the tenant's deposits in compensation plus \$50.00 for filing the application.

Analysis

Section 16 of the Act provides that 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 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute.

In this instance I find that the parties entered into a written agreement which stated that the tenant would take possession on July 1, 2010. I find that a subsequent verbal agreement was apparently reached between the parties that the unit would be painted.

I find that a tenant is at liberty to terminate a tenancy but must do so in compliance with the Act or liability may follow. Section 45 of the Act gives the tenant a right to end a periodic tenancy by giving the landlord written notice 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.

In this instance, I find that the earliest day that the tenant could have ended the tenancy in compliance with the Act for any reason would be July 31, 2010, provided the tenant had served the landlord with the written notice prior to July 1, 2010. In this case, I find that the tenant did not give the landlord sufficient notice to end the tenancy effective July 1, 2010.

I find that the tenancy was ended by the tenant in a manner that contravened the Act and the agreement. Section 7 of the Act states that if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Based on the evidence and testimony, I find that the landlord has established a total monetary claim of \$775.00 comprised of \$725.00 rent owed for July 2010 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security and pet damage deposits of \$725.00 in partial satisfaction of the claim leaving a balance due of \$50.00.

Conclusion

I hereby grant the Landlord an order under section 67 for \$50.00. This order must be served on the Respondent 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: December 2010.

Dispute Resolution Officer