

DECISION

Dispute Codes MNR, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Tenant to recover the cost of a kitchen tap, for compensation pursuant to a 2 Month Notice to End Tenancy and to recover the filing fee for this proceeding. At the beginning of the hearing, the Tenant withdrew her application to recover compensation for painting supplies, for cleaning expenses and for her labour to install a kitchen tap.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of a security deposit?

Background and Evidence

This month-to-month tenancy started on September 1, 2009. Rent is \$1,000.00 per month payable on the 15th day of each month (for the calendar month in which it is paid). The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Landlord served the Tenant on March 12, 2011 with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 12, 2011. The ground stated on the Notice was that "the rental unit will be occupied by the landlord or a close family member (father, mother or child) of the landlord or the landlord's spouse." The Tenant said the Landlord listed the rental property for sale on March 5, 2011. The Landlord said she intends to occupy the rental property and make repairs to it and is unsure if she will keep the property listed for sale. The Tenant said she intends to move out on May 31, 2011, the effective date of the Notice.

Analysis

Section 51(1.1) of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy is entitled to withhold their last month's rent as compensation for ending the tenancy. I find that the Tenant's application for one month's compensation pursuant to s. 50 of the Act is premature because she intends to reside in the rental unit for May 2011 and has not pre-paid rent for that month. Consequently, the Tenant will be compensated by being able to withhold her rent for that month. Should the Tenant's circumstances change, however and she moves out earlier, then she may re-apply for this relief.

Section 51(2) of the Act says that if a Landlord does not use the rental property for the purpose stated on the 2 Month Notice for at least 6 months after the effective date of the Notice, the Landlord must pay the Tenant an amount that is equivalent to 2 months rent payable under the tenancy agreement. I find that the Tenant's application for compensation pursuant to s. 51(2) of the Act is also premature because the time period for calculating the 6 month period of time for the purposes of s. 51(2) will not start for a further 7 weeks (i.e., once the tenancy ends). Should the Landlord or a close family member not reside in the rental unit for the 6 month period following the effective date of the Notice, then the Tenant may reapply for this relief.

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date she receives the Tenant's forwarding address in writing to either return the Tenant's security deposit or apply for dispute resolution to make a claim against the security deposit. As the tenancy has not ended, I find that this part of the Tenant's application is also premature and it is dismissed with leave to reapply.

The Tenant also sought to recover the cost of replacing a kitchen tap in the amount of \$72.80. The Landlord claimed however, that the Tenant gave her with a cheque post-dated for April 15, 2011 in payment of April 2011 rent and that she deducted the amount of \$72.80 from the rent. The Landlord said she did not object to the Tenant deducting this amount provided there were no problems cashing the cheque. In the circumstances, I find that the Tenant has already been compensated for this expense by deducting it from her rent and as a result, this part of her application is dismissed without leave to reapply. As there was nothing contained in the Tenant's application that was in dispute at the hearing, I find that it is not an appropriate case to allow the Tenant to recover from the Landlord the \$50.00 filing fee for this proceeding and that part of her application is also dismissed without leave to reapply.

Conclusion

The Tenant's applications for compensation for painting supplies, for cleaning expenses and for her labour to install a kitchen tap are withdrawn. The Tenant's application for compensation pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 12, 2011 is dismissed with leave to reapply. The Tenant's applications for compensation for her labour to install a kitchen tap and to recover the filing fee for this proceeding are 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: April 11, 2011.

Residential Tenancy Branch