



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, FF

Introduction

This hearing was originally scheduled to be heard on September 13, 2011 along with a tenant's application. On September 13, 2011 the tenant's application was heard and I severed the tenant's application from the landlord's application. The landlord's application was rescheduled to be heard on October 13, 2011. Both parties appeared at the October 13, 2011 hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord's applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authority to retain the security deposit and recover the filing fee paid for this application and a previous application. The landlord had also applied for an Order of Possession with this application; however, the tenant had vacated the rental unit before this application was made and this request was not necessary.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for loss of rent for August 2011?
2. Is the landlord entitled to recover other costs associated to filing Applications for Dispute Resolution participating in the dispute resolution process?
3. Is the landlord entitled to costs associated to conducting a move-out inspection with the tenant?
4. Is the landlord awarded filing fees for this application and a previous application?

Background and Evidence

The tenancy commenced June 1, 2010 on a month-to-month basis for a monthly rent of \$444.67 including the tenant's contribution for support services. The tenant paid a \$200.00 security deposit.

On June 21, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the tenant. The tenant did not file an Application for Dispute Resolution to dispute the Notice but on June 27, 2011 the tenant emailed the landlord to request that she be permitted until August 31, 2011 to vacate the unit. The landlord responded June 29, 2011 to advise the tenant that her request was denied and that the landlord would be seeking an Order of Possession. The landlord also informed the tenant that any request for an extension must be in writing. The tenant responded by submitting a written request for extension, complete with her signature, on June 29, 2011. The landlord did not respond to the tenant's written request.

The landlord submitted that it was unnecessary to respond to the tenant's written request for extension because the landlord had already communicated their intentions on June 29, 2011. The landlord submitted that they had serious doubts that the tenant would comply with the Notice and vacate the unit by July 31, 2011. The landlord cited two reasons for reaching this conclusion: (1) the tenant was frequently ill; and (2) the tenant had made various allegations against the landlord in a letter dated July 13, 2011. As a result, the landlords did not attempt to re-rent the unit for August 1, 2011 for fear the tenant would not return vacant possession by July 31, 2011. The landlord commenced efforts to re-rent the unit in August 2011, after the tenant vacated, and re-rented the unit starting September 2011. The landlord is seeking compensation of \$500.00 for loss of rent as this is the new amount of rent payable by tenants.

The tenant submitted that upon being informed that she would not be granted an extension of time she proceeded to seek out new accommodation and she succeeded in finding new accommodation in early July 2011. The tenant claimed she told one of the landlord's agents of this in person. On July 11, 2011 the tenant had signed her new tenancy agreement and was served with the landlord's application for an Order of Possession. The tenant wrote the letter of July 13, 2011 in response to being served with the landlord's Application for Dispute Resolution as the tenant was fearful she would be held responsible for paying the filing fee for that application when she felt it was completely unnecessary.

In addition to the claim for loss of rent, the landlord applied to recover registered mail costs and filing fees for this application and the application filed July 6, 2011 for the Order of Possession. The landlord further seeks compensation for mileage paid to volunteers for dispute resolution proceedings and overtime costs paid to staff to perform the move-out inspection.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where a tenant receives a 1 Month Notice to End Tenancy for Cause, section 47 of the Act provides that the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not dispute the Notice the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date of the Notice.

In this case, the tenant received a 1 Month Notice and did not file to dispute the Notice. Accordingly, she was required to vacate the rental unit by July 31, 2011 in order to comply with section 47 of the Act. The tenant did vacate the rental unit by that date and I find no violation of section 47 by the tenant.

It is undisputed that the tenant was frequently ill and had asked the landlord for an extension of time to vacate the rental unit and the landlord denied the request for an extension. I find the fact the tenant was frequently ill or had asked for an extension is not a violation of the Act, regulations or tenancy agreement and does not form a basis to seek compensation from the tenant.

The landlord also pointed to a letter received from the tenant on July 13, 2011 in concluding the tenant may not vacate the rental unit by July 31, 2011; however, the landlord had already filed an Application for Dispute Resolution seeking an Order of Possession by that date. Upon review of the July 13, 2011 letter I find it clear that the intended purpose of that letter was for the landlord to withdraw the landlord's application for an Order of Possession as the tenant was of the position it was an unnecessary application for which she did not want to pay the filing fee. Therefore, I accept the tenant's position that the letter was in response to being served with the landlord's

application for an Order of Possession and I do not find the tenant's letter to a basis to hold the tenant responsible for loss of rent for August 2011.

In light of the above, I find the tenant is not responsible for compensating the landlord for loss of rent for the month of August 2011 and I dismiss that portion of the landlord's claim.

The landlord's claims for compensation for costs incurred to conduct a move-out inspection is denied as costs incurred to comply with the landlord's obligation to participate in a move-out inspection are not recoverable under the Act. Nor are costs associated to preparing for or participating in a dispute resolution proceeding recoverable, with the exception of the filing fee paid for the application. I make no award for a filing fee paid for a different application and I deny the landlord's claim to recover the filing fee paid for this application given the landlord's lack of success in this application. Therefore, all of these claims are dismissed.

Since I have dismissed all of the landlord's claims against the tenant, I order the landlord to return the tenant's security deposit to her. The tenant is provided a Monetary Order in the amount of \$200.00 to serve upon the landlord and enforce as necessary.

Conclusion

The landlord's claims against the tenant are dismissed. The landlord is ordered to return the tenant's security deposit to her. The tenant is provided a Monetary Order in the amount of \$200.00 to serve upon the landlord.

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 14, 2011.

Residential Tenancy Branch