



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by 2 agents for the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by both parties on September 26, 2011 for a 1 year fixed term tenancy beginning on October 1, 2011 for a monthly rent of \$980.00 due on the 1st of each month with a security deposit of \$490.00 paid.

The parties agree the tenant provided to the landlord, on October 27, 2011 a letter providing the landlord with notice of her intention to end the tenancy on November 15, 2011. The notice provides the tenant's reasons for ending the tenancy as "extraordinary circumstances (persistent odour in apartment, mentioned earlier and documented in the moving in form)."

The tenant testified that she had informed the landlord of the problem of a foul smell in the rental unit and that it continued to persist despite leaving the windows open all the time and the use of an odour suppressant provided by the landlord.

The tenant testified that she discussed with the onsite agent for the landlord to determine if the landlord would accept November 15, 2011 as the end date of the tenancy and the agent indicated that the tenant would get her security deposit returned if she left the unit cleaned in accordance with the tenancy agreement. She states at no time did she think the landlord expected her to pay rent for the full month.

The tenant testified that she was concerned with potential health hazards from the smell and that as winter progressed it became uncomfortable to have the windows open all the time and decided on November 15, 2011 as a date to move from the rental unit.

The parties agreed the tenant paid rent on November 1, 2011 in the amount of \$490.00. The tenant testified that she never heard anything else from the landlord until she received the notice of hearing documents.

Analysis

Section 44 of the Act allows a tenant to end a tenancy either by providing the landlord notice with their intent to end the tenancy, in accordance with Section 45 or by mutual agreement in writing to end the tenancy. I find the parties have provided no written agreement that stipulates a mutual end to tenancy.

As such, in order to a tenant to end the tenancy the tenant must comply with Section 45. Section 45 stipulates that a tenant may end a periodic 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.

This tenancy was for a fixed term of 1 year, as such pursuant to Section 45(2) a tenant may not end the tenancy any earlier than the end date of the fixed term. However, clause 7 of the tenancy agreement submitted into evidence stipulates: "to terminate this lease prior to the expiry date on the 1 day of October 2011 the tenant will be required to pay \$25.00 and must give one calendar month's notice."

As such, I find the tenant would be allowed under this tenancy agreement to end a tenancy prior to the end of the fixed term, however in order to do so the tenant must provide one calendar month notice.

Section 45(3) does allow a tenant to end a tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, on a date that is after the date the landlord receives the notice.

There was no evidence before me that the tenant had provided the landlord written notice of any failure to comply with a material term.

For the reasons noted above, I find the tenant is responsible for rent for the full month of November 2011.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$540.00** comprised of \$490.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$490.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 13, 2011.

Residential Tenancy Branch