



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNR MNDC FF

For the tenant: MNDC RPP FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for a monetary order for unpaid rent and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for recovery of the filing fee.

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; to order the landlord to return the tenant’s personal property; and to recover the filing fee.

The hearing process was explained to the parties. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Both parties agreed that they received the evidence package and application of the other party prior to the hearing. As a result, I find that the parties were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Should the landlord be granted a monetary order for unpaid rent; or for money owed or compensation for damage or loss?

- Should the tenant be granted a monetary order for money owed or compensation for damage or loss?
- Should the landlord be ordered to return the tenant's personal property?
- Should either party recover the filing fee?

Background and Evidence

The tenancy agreement was submitted as documentary evidence prior to the hearing. The parties agreed a new tenancy agreement was signed when the tenant's former partner vacated the rental unit. The new tenancy agreement was signed in October 2011. The tenancy agreement was to expire on July 31, 2012. The original security deposit of \$750.00 was returned to FG, one of the original tenants. The tenant disputes that she did not agreed to the return of the security deposit to FG. The landlord stated that when FG vacated the rental unit, he was entitled to the security deposit as he originally paid the security deposit. A new security deposit was not paid by the remaining tenant upon signing the new tenancy agreement on October 20, 2011.

The landlord stated she served the tenant on March 24, 2012 via personal service with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") dated March 24, 2012 and effective on May 30, 2012. The landlord, on March 24, 2012, affirms that she received a text message from the tenant stating that the 2 Month Notice was not valid.

The tenant testified that she faxed a letter dated April 21, 2012 to the landlord's work fax number on April 21, 2012, which was the contact number for the tenant. The faxed letter indicated that the tenant was vacating the rental unit on April 30, 2012 due to the 2 Month Notice received with an effective date of May 30, 2012.

The landlord provided documentary evidence prior to the hearing of an airline e-ticket receipt indicating that she was out of the country from April 22, 2012 and returned on April 27, 2012. The landlord testified that she was not at work on Saturday, April 21, 2012, so did not receive the tenant's fax until she returned to work on April 27, 2012. The landlord testified that she did not know the tenant was vacating the rental unit for certain until receiving the notice from the tenant that she was ending the tenancy early.

On April 30, 2012, the tenant vacated the rental unit. The landlord claims that some of the landlord's personal items (a decorative rod and a pot holder) went missing and were reported stolen to the local police department. During the hearing, the landlord

amended her claim as the pot holder was subsequently returned, however, the landlord states that the decorative rod worth \$175.00, remains missing.

The landlord applied for dispute resolution on May 8, 2012 claiming \$1,800.00 consisting of May 2012 rent and \$300.00 in stolen items. The tenant applied for dispute resolution on May 23, 2012 for \$3,082.70 consisting of one month rent compensation of \$1,500.00 for ending the lease early; \$1,500.00 for one month rent as the landlord did not move in to the rental unit; and \$82.70 for unreturned property allegedly taken by the landlord. The tenant did not provide evidence as to what the \$82.70 portion of her claim consisted of, within the details of her dispute application.

The landlord testified that when she received various texts from the tenant, she felt that the tenant did not accept the 2 Month Notice, and as a result, that the tenant would not be moving out. The landlord stated that although she intended to move into the rental unit for her own use as of the effective date on the 2 Month Notice of May 30, 2012, she felt she could not do so if the tenant was not moving out, and did not provide notice at her current residence as a result. The landlord stated that the rental unit is now vacant and that she intends to move in as soon as her current lease expires.

The landlord stated that she could have someone available for July 1, 2012 but intends to move in as soon as possible. In the mean time, the landlord stated she is storing items in the rental unit. The tenant claims that the rental unit looks lived in but could not provide any specific evidence to support her claim. The landlord disputed the tenant's testimony by stating that the rental unit is being occupied by the landlord as she is storing items there, however, no new tenants have moved in to date.

The tenant stated during the hearing that the landlord is a property manager and should have known what the rules were around the *Act*. The landlord responded by clarifying that she is a strata property manager, and not a residential property manager.

Both parties provided evidence packages, including but not limited to, texts, emails and other correspondence; a flight itinerary; details of dispute; notices and forms. The evidence packages of both parties have been reviewed for consideration in my Decision.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Claim for lost or stolen items – As the landlord indicated that she contacted the local police department regarding her alleged stolen items, I defer to the police to investigate her complaint and do not make any findings as a result. The tenant made a monetary claim for \$87.20, however, did not provide specific details in the dispute application and as a result, I dismiss the tenant's claims of \$87.20 due to lack of evidence.

Tenant's claim towards half of the security deposit – This was not included in the tenant's application for dispute resolution. As a result, no findings are made with respect to the return of the security deposit. For the benefit of both parties, however, if a landlord returns the security deposit to one tenant, the landlord's obligation for that security deposit ends.

2 Month Notice to End Tenancy for Landlord's Use of Property - The landlord stated she served the tenant on March 24, 2012 via personal service with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") dated March 24, 2012 and effective on May 30, 2012. Although the tenant responded that she did not feel the 2 Month Notice was valid, one party cannot unilaterally cancel a Notice. As a result, the 2 Month Notice was not disputed within 15 days of receiving the notice and would have become effective May 31, 2012 pursuant to section 49 of the *Act*. However, in the matter before me, the tenant provided written notice to end the tenancy early as described below.

Tenant's written notice to vacate early - The tenant faxed her written notice letter to the landlord's business fax on April 21, 2012. Section 90 of the *Act* states that this letter was received on the 3rd day after it was faxed. Section 50 of the *Act* states:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Given the above, as the tenant faxed her written notice to end the tenancy early on April 21, 2012 and it was deemed served 3 days later on April 24, 2012, 10 days from that date would correct the effective date from April 30, 2012 to May 4, 2012.

Landlord's Use of Property - The landlord stated that she intends to move into the rental unit once her lease expires. In the mean time, the landlord states that she is using the rental unit to store items. The landlord denies that she has rented the rental unit to another tenant in the interim. As the tenant has not provided specific evidence that the landlord does not intend to move into the rental unit, and the landlord testified that she intends to move into the rental unit at the earliest opportunity, I do not find that the tenant is entitled to further compensation under the *Act* at this time and that such a claim is premature as the landlord is entitled to a reasonable period of time to occupy the rental unit.

Tenant compensation equivalent to one month's rent –

Section 51(1) of the *Act* states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The tenant, therefore, is entitled to an amount equivalent of May 2012 rent in the amount of \$1,500.00. I, therefore, grant the tenant a monetary order for \$1,500.00 pursuant to the 2 Month Notice. As the tenant was partially successful in her application, I grant the tenant half of her filing fee in the amount of \$25.00. I order a total monetary order to be paid to the tenant pursuant to section 67 of the *Act* in the amount of **\$1,525.00**

I dismiss the landlord's application and, therefore, do not grant the recovery of the filing fee.

Conclusion

I dismiss the landlord's application. I do not grant the landlord recovery of the filing fee as a result.

I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$1,525.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 26, 2012

Residential Tenancy Branch