



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNR, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for return of double the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 12, 2012 for a 6 month fixed term tenancy beginning on January 16, 2012 and ending on July 15, 2012 with a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid on January 8, 2012.

The landlord also submits a handwritten notice from the tenant dated May 31, 2012 asking the landlords to "Please accept this letter as my one month notice as of June First. I will be moving out on July First."

The tenant testified that the reason she vacated the rental unit was that the ant problem had not been resolved and the local licensor was not familiar with the treatment provided by the exterminator and she had been advised by Regional District and Health Authority personnel that she did not have to stay in the rental unit if it was unsafe for her and her baby. The tenant acknowledged did not contact the Residential Tenancy Branch to obtain information on how to end a tenancy under these circumstances.

The tenant has submitted a typewritten letter dated June 28, 2012 to the landlords providing the reason the tenant is leaving on July 1, 2012 is because of the ant problem that has been ongoing since February 2012. The tenant provided another letter dated the June 28, 2012 providing the landlords with her forwarding address.

The tenant noted that the landlord would not be entitled to rent for the period from her because he did not rent out the unit to another tenant. The landlord testified the tenant moved out on July 1, 2012 and it was difficult to find anyone to move in on the 2nd as most rentals would have been for the 1st.

The landlord also testified he advertised on Craigslist and Kijiji and that the ads would have been posted a day or two after the tenant gave her first written notice. He further states that during the month of June he entered into a new tenancy agreement effective July 16, 2012.

The tenant has also provided a letter from the landlords dated July 28, 2012 to the tenant advising the tenant that they are providing her with the security deposit cheque and that if she continues with her claim for double the security deposit the will file an Application for Dispute Resolution claiming for unpaid rent for the last two weeks of the tenancy and for replacement locks; a copy a Condition Inspect Report; and a copy of the cheque dated July 28, 2012 that the landlords provided to the tenant for return of the security deposit. The tenant notes that she has not cashed this cheque.

The parties agreed the tenant had received the cheque from the landlord. The tenant confirmed that she has not yet cashed the cheque. The landlord stipulated that he understood that he should have returned the security deposit to the tenant on July 1, 2012 when they completed the walk through.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a fixed term 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; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a 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, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I accept that the landlord's obligations under Section 32 to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant would be a material term there is a specific process the tenant must undertake to end the tenancy under Section 45(3).

Residential Tenancy Policy Guideline 8 states that to end a tenancy for breach of a material term the party alleging the breach must inform the other party in writing:

1. That there is a problem;
2. That they believe the problem is a breach of a material term of the tenancy agreement;
3. That the problem must be fixed by a deadline included in the letter, and that the deadline must be reasonable; and
4. That if the problem is not fixed by the deadline, the party will end the tenancy.

From the evidence before me, I find the tenant did not provide the written notice required as outlined above and as such the earliest the tenancy could end was July 15, 2012. Therefore I find the landlord is entitled to rent for the two week period resulting from the tenant's violation of the Section 45 of the *Act*.

I accept, based on the landlord's undisputed testimony that he advertised the rental unit as soon as possible and that as a result in June 2012 he secured a new tenancy beginning on July 16, 2012.

I am not persuaded by the tenant's position that most tenancies end on the 1st of each month and new ones start on the same day. Because the *Act* requires tenancies end on the day before in the month the day that rent is due according to the tenancy agreement most tenancies would start on the day after most tenancies would end.

Section 7 of the *Act* requires a party making a claim against the other party in the tenancy "must do whatever is reasonable to minimize the damage or loss. I find the landlord took all reasonable steps to secure a new tenancy and has taken sufficient steps to mitigate his losses and is therefore entitled to the rent noted above.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the

landlord must pay the tenant double the security deposit. I note there is no required for the landlord to return the security deposit on the day the walk through is completed.

As the tenant had provided her forwarding address on July 1, 2012 and I have determined the tenancy ended on July 15, 2012 I find that the landlord's provision of the security deposit by cheque on July 28, 2012 satisfies the landlord's obligations under Section 38(1) and the tenant is not entitled to double the amount of the security deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$600.00** comprised of \$550.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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.

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 05, 2012.

Residential Tenancy Branch