



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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 the landlord's agent and the tenant. While the tenant had arranged for a witness to be available she was not called upon to provide any testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage or loss; 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 16, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree they entered into a 1 year fixed term tenancy set to begin on October 1, 2012 for a monthly rent of \$835.00 due on the 1st of each month with a security deposit of \$417.50 and a pet damage deposit of \$200.00 paid. The tenant submits that the landlord did not instruct her to read the tenancy agreement before she signed it but rather that she instructed her to sign it only.

The tenancy agreement included a liquidated damages clause that stipulates that should the tenant end the tenancy prior to the end of the fixed term the tenant must pay the landlord \$285.00 noted as a genuine pre-estimate of the costs associated with re-renting the unit.

The parties agree the tenant did not move into the rental unit and on September 30, 2012 provided the landlord with an email explaining why she would not be moving in.

The tenant submits that the rental unit was not sufficiently cleaned for her to take occupancy and that part of the issue was a substantial cat urine smell that was unbearable.

The landlord, in an email response, offered to correct the deficiencies identified by the tenant, however the tenant declined the landlord this opportunity and advised she would not be moving in. The tenant submits that the landlord offered her a choice to have the unit cleaned or move out; the tenant chose to move out and the landlord accepted the notice. The landlord's agent submitted the landlord cannot refuse a tenant's notice to vacate the property and had no choice but to accept the notice.

The tenant provided documentary evidence that she provided the landlord with her forwarding address and request for the return of the deposits on October 2, 2012. The parties agree the landlord issued a cheque dated September 3, 2012 for return of the pet damage deposit.

Analysis

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. As such, in the case before me the tenant could only end the tenancy in accordance with the provisions under Section 45 of the *Act*.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a 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 the condition of the rental unit at the start of the tenancy could constitute a material term of the tenancy, in the case before me, the tenant gave the landlord notice that she intended to end the tenancy because of the deficiencies, she did not provide an opportunity for the landlord to correct the situation.

Further, I find that the landlord offered to correct the situation by having the unit cleaned to the satisfaction of the tenant and she rejected this offer. As such, I find that the tenant gave the landlord a notice to end her tenancy that did not comply with either Section 45(2) or 45(3) and as such the tenant remained responsible for rent for the duration of the fixed term of the tenancy.

However as the landlord has provided no testimony or evidence as to when the rental unit was re-rented and only seeks to retain the security deposit for any amounts of rent due I find the landlord is entitled to \$417.50 for lost rent as a result of the tenant's non-compliant notice to end tenancy.

In relation to the landlord's claim for liquidated damages, I accept that the tenancy agreement stipulated that the tenant must pay the landlord \$285.00 for ending the tenancy prior to the end of the fixed term and that this amount was based on the administrative costs of re-renting the unit.

Despite the tenant's assertion that the landlord did not instruct her to read the tenancy agreement before she signed it, I find that any party entering into a contract must satisfy themselves of the terms of that contract and should not rely on instructions from the other party to read the contractual documents.

For these reasons, I find the landlord is entitled to liquidated damages as claimed.

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.

While I accept that tenant had provided her forwarding address on both October 2, 2012 and on October 24, 2012 I find that as a result of the tenant failing to provide notice to end the tenancy in accordance with Section 45(2) and 45(3) the tenancy had not ended at the time the landlord submitted their Application for Dispute Resolution. I therefore find the landlord has complied with Section 38(1) and is not required to double the security deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$752.50** comprised of \$417.50 rent owed; \$285.00 liquidated damages 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 \$417.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$335.00**.

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: January 23, 2013

