



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated March 13, 2013 posted on the door and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy and vacated on March 26, 2013. Has the landlord proved on the balance of probabilities that there is unpaid rent and utilities and the amounts owed? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises in June 2012, a security deposit of \$875.00 was paid and rent is \$1750 a month plus utilities. It is undisputed that the tenant did not pay rent for March 2013 or utilities for January to March 2013.

The tenant said they had two floods in March 2013 and many of their belongings were soaked with water as the water came up through the floorboards. The tenant said she immediately emailed the landlord and began cleaning up the water and a contractor sent by the landlord came over and did something with a drain pipe to get the water to

drain. The landlord said he was out of the province, was alarmed by exaggerated accounts of the flood by the tenants and promised them to forgive the rent and utilities owed if they complied with the Notice to End Tenancy. He said he came to the unit on March 5, 2013 and did not think it was as wet as the tenants claimed. A restoration company went over also and said about March 6, 2013 that there was little water but they put antimicrobial and drying equipment in it. The tenant said they suffer from asthma and the water had wicked up the wall about 6 feet according to the restoration people; they did not put this in their report in evidence but one of their contractors, M, sent an email saying this.

Many emails between the parties are in evidence and neither party denied sending them when they were discussed in the hearing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order

I find the landlord wrote an email message on March 11, 2013 that he wasn't asking "for rent or back utilities or anything pending this. You are saying you should not have to pay rent anyways. I understand now." He further wrote that a 10 day notice was posted on their door on March 13 and they gave up their tenancy on the last possible day to avoid legal action, the 26th. He states "We were under no legal obligation to compensate you in any way. However, we (over-generously) offered that if you vacated the premises within the 10 days of the March 13 notice, in good faith and without incident, vandalism or future harassment, K..and I would not pursue you in court for the unpaid rent nor the utilities owed. The deadline to our offer was March 23 and you ignored it. The residential tenancies office may have given you an extra 3 days before your eviction became a legal matter, but an extra 3 days was not part of our offer to you". He said it added insult to injury that she wanted her security deposit back.

The tenant said she actually vacated on March 17 but was coming back to remove many water soaked files and items. She said they spent countless hours cleaning up the water at the times of the two floods and cleaning the unit. I find the tenant's evidence regarding the flood damage more credible than the landlord's as it is supported by an email from the renovation company, a person called M..., who notes the damage is worse than thought and has wicked almost 6 feet up the walls. It is also supported by the fact that the landlord did not see the unit until the tenants had cleaned up a lot of water and yet he still promised them that he would not pursue them for back rent and utilities several days after that.

I find the weight of the evidence is that the landlord promised the tenant that he would not pursue her for back rent or utilities provided she complied with the Notice to End Tenancy and vacated the premises. I find insufficient evidence to support his contention that the offer was only applicable if her actions were taken to vacate before or on May 23, 2013. In any case, I find the tenant's emails to him state she has vacated as of March 15, 2013 but is still cleaning up. I find the extra time to clean up was most probably due to the extent of the problems caused by two floods. His emails indicate he entered the suite on March 26, 2013 to inspect it. In earlier emails, he states that he is fine with it if they want to move out earlier and thanks them for cleaning up the water.

I find the tenant was entitled to rely on the landlord's written promise to not pursue her for back rent or utilities provided she complied with the Notice to End Tenancy which legally did not take effect until March 26, 2013. Whether or not he made the promise rashly, he did make that agreement with her and I find she was entitled to rely on it, especially as she spent many hours cleaning up two floods on the premises to preserve the landlord's property. As I find she does not owe rent or utilities, I find the landlord does not have a right to retain her security deposit. He made this application on April 8, 2013 which complies with the 15 day limitation in section 38 of the Act and so avoids the doubling provision.

Conclusion:

I dismiss the landlord's application in its entirety and I find he is not entitled to recover the filing fee for the application.

I HEREBY ORDER the landlord to return the tenant's security deposit in full to her within 15 days of receipt of this decision.

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: May 16, 2013

Residential Tenancy Branch

