



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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.

At the outset of the hearing the landlord's agent testified that while the original Application indicated they were seeking \$430.97. However, she stated that amount was a miscalculation and they were actually seeking \$374.84. I have amended the landlord's Application to reflect this change in amount.

Issue(s) to be Decided

The issues to be decided are whether the landlord is 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)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by both parties on June 27, 2012 for a month to month tenancy beginning on July 1, 2012 for the monthly rent of \$830.00 due on the 1st of each month with a security deposit of \$415.00 paid.

The landlord submits the tenant was given the keys to the rental unit on June 30, 2012 but he returned them the same day and did not move into the rental unit. The landlord further submits the tenant had been made aware the only unit available and that he accepted was undergoing.

The tenant submits that when he got the keys he found the unit had "strong chemical stimulus smells of various decoration materials" that rendered the unit uninhabitable. The tenant then returned the keys to the building manager. The tenant stated that had

no medical conditions that caused any problems but that he has chemical sensitivities. The tenant testified that he had discussed alternatives with the building manager but there were no other available units.

The landlord testified that they advertised the rental unit on their website as well as on Craigslist. The landlord noted they were able to re-rent the unit effective July 15, 2012.

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 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, I find the tenant was obligated to end the tenancy in accordance with the *Act*. Section 44 states a tenancy will end if the tenant gives a notice under Section 45; the landlord and tenant agree in writing to end the tenancy; or the tenancy agreement is frustrated.

Frustration, in relation to contracts such as a tenancy agreement, is defined in Black's Law Dictionary, 7th Edition as "the doctrine that, if the entire performance of a contract becomes fundamentally changed without any fault by either party, the contract is considered terminated.

Based on the testimony before me the tenant seems to be suggesting that as a result of the odours in the rental unit the tenancy agreement was frustrated. However, I find that this contract was not frustrated for the following reasons:

1. The condition of odours from painting and any additional installations was likely a temporary situation, as evidenced by the fact the landlord was able to re-rent the unit within 15 days of receiving the tenant's rejection of the unit. As such, I find the entire performance of the contract was not fundamentally changed; and
2. Based on the testimony and evidence of both parties, the tenant was aware prior to agreeing to the tenancy and signing the tenancy agreement that the rental unit was undergoing renovations. If the tenant had concerns about products that may have been used and since he testified that he has chemical sensitivities it was incumbent upon him to inquire more thoroughly as to what renovations were being made; what chemicals were being used; and then decide if he wanted to

enter into the tenancy agreement. From the testimony and evidence, I find the tenant failed to take these steps.

As the contract was not frustrated and there was no evidence before me that the parties entered into a mutual agreement to end the tenancy, I find the tenant was obligated to provide notice to end the tenancy under Section 45.

Section 45(1) of the *Act* stipulates that a tenant may end a 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 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.

As the tenant failed to provide the landlord with notice in accordance with Section 45, I find the tenant is responsible for rent for the month July 2012 subject only to the landlord's requirement to mitigate any losses.

I am satisfied, from the landlord's testimony, that they took reasonable steps to mitigate the loss by advertising to re-rent the unit and that they found suitable tenants within a reasonable time, lessening the obligation of the tenant to that of 15 days lost revenue.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$424.84** comprised of \$374.84 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.

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: June 12, 2013

Residential Tenancy Branch

