



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order claiming loss of rent and seeking an order to retain the security deposit in satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of rent?

Background and Evidence

The landlord testified that the tenancy began September 15, 2012 for a one-year fixed term that was to expire on September 30, 2013. The rent was \$1,450.00 and a security deposit of \$775.00 was paid.

The landlord testified that the tenant requested that the tenancy be ended before the expiry date and, as a result, the parties entered into a mutual agreement to terminate the tenancy effective July 31, 2013.

The landlord testified that on June 25, 2013, the tenant suddenly gave written notice that she was, instead, vacating on June 30, 2013. The landlord testified that the tenant also refused to pay the rent for July 2013. The landlord testified that they lost \$1,450.00 rent for July 2013, due to the tenant's violation of the agreement.

The tenant acknowledged that she gave the landlord 5 days notice before vacating and did not comply with the July 31, 2013 vacancy date agreed upon. The tenant testified that she had no choice but to vacate suddenly for the health and safety of her family. According to the tenant, other residents in the building were engaged in serious drug-related activities, including the possible manufacture of toxic substances, that placed the tenant and her children at serious risk.

The tenant testified that she complained to the landlord, the police and even the fire department about the illegal activities going on in the suite below. The tenant stated that the landlord did not take appropriate action to stop the activities and this forced the tenant to relocate. The tenant pointed out that her decision to leave on short notice was made on recommendation of the police and caused her significant hardship.

The landlord argued that they had complied in every way with the Act and even accommodated the tenant's request to shorten the fixed term. The landlord testified that they investigated the allegations made by the tenant on 3 different occasions and, after inspecting the suite, found nothing suspicious. The landlord pointed out that they could not take any further action than the Act permits. According to the landlord, the other residents, that the tenant reported, were not found to be in violation of the Act or their agreement.

The landlord's position is that the tenant had violated the Act and agreement and that the landlord should be compensated for the resulting losses. The landlord is seeking compensation of \$1,450.00 plus the \$50.00 cost of the application.

Analysis

Section 44(1) of the Act provides the compliant ways that a tenancy can be ended, which includes the following:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended.*
(my emphasis)

A tenant can only end a fixed term tenancy on the date it expires. **Section 45** of the Act permits a tenant to end a month-to-month tenancy by giving the landlord written notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case I find that the parties had entered into a valid mutual agreement to terminate the tenancy effective July 31, 2013 and I find that the tenant did not comply with the agreement.

I find that the tenant provided written Notice to terminate the tenancy even earlier, but this notice was not in compliance with section 45 of the Act or any other part of the legislation governing the legal termination of a tenancy.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Based on the above facts I find that the tenant did commit a violation of the Act and the agreement and that the landlord suffered a monetary loss equivalent to one month rent, as a result.

Accordingly, I find that the landlord has established a total monetary claim of \$1,500.00 comprised of \$1,450.00 loss of revenue for the month of July 2013 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's security deposit of \$725.00, in partial satisfaction of the claim leaving \$775.00 still outstanding in favour of the landlord.

Accordingly, I hereby grant the landlord a monetary order in the amount of \$775.00. This order must be served on the tenant and may be enforced through an order from Small Claims Court if necessary.

Conclusion

The landlord is successful in the application and is granted a monetary order for loss of revenue caused by the tenant's failure to comply with the Act and agreement.

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 22, 2013

Residential Tenancy Branch

