



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for unpaid rent or utilities, to keep all or part of the pet damage or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord and tenant both appeared for the hearing no issues in relation to the service of documents under the *Residential Tenancy Act* (referred to as the Act) were raised by any of the parties.

The landlord's and tenant's affirmed testimony and documentary evidence was carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to keep the tenant's security deposit in full satisfaction of the landlord's claim?

Background and Evidence

The landlord testified that the tenancy started on April 9, 2013 as per the written tenancy agreement that was provided as evidence. The tenant disagreed and testified that she did not move in until April 12, 2013. Both parties agreed that the tenancy was a month to month tenancy and that rent was payable by the tenant in the amount of \$950.00 on the first day of each month. The tenant paid the landlord a security deposit in the amount of \$475.00 on April 6, 2013, which the landlord still retains.

The landlord testified that the tenant left the tenancy on April 30, 2013 without giving any prior written notice to end the tenancy. The tenant then made an application for dispute resolution for the return of her security deposit; during the hearing on

September 25, 2013 the landlord testified that the Arbitrator found that the tenant had not provided the forwarding address as required by the Act and as part of the formal proceedings the address was provided by the tenant during the hearing giving the landlord 15 days to either return the security deposit or make a claim for it by October 10, 2013. As a result, the landlord made this application in response on October 4, 2013.

The landlord testified that the tenant put a stop to her post-dated cheque for May, 2013. The landlord managed to mitigate her loss by re-renting out the suite for May 15, 2013. As a result, the landlord now claims the tenant's security deposit in full satisfaction of her claim for two weeks lost rent for May, 2013.

The tenant testified that when she moved into the rental suite there was constant barking from neighbours' dogs. The tenant testified that she reported this to the landlord's agent who failed to take adequate steps to rectify the problem. The tenant testified that the landlord's agent gave her verbal permission a week before to end the tenancy on April 30, 2013 as the noise had become unbearable. The tenant confirmed that no written notice had been provided to the landlord to end the tenancy.

Analysis

During the previous hearing on September 25, 2013, the Arbitrator provided written instructions on the obligations of the landlord in dealing with the tenant's security deposit by October 10, 2013. The landlord made the application on October 4, 2013 and as a result, I find that the landlord made the application to keep the tenant's security deposit within the allowed time limits stipulated by the Act.

Section 45(1) of the Act talks about a tenant's obligation when ending a month to month (periodic) tenancy. The Act states that the tenant **must** give the landlord a notice of at least one **full rental month** before ending the tenancy and this **must** be done in writing. In this instance the tenant testified that a one weeks' notice was verbally provided to the landlord before she vacated and that the landlord's agent agreed to this. The landlord denied agreeing to end the tenancy in this manner which was the reason for this claim. As a result, I find that the tenant failed to meet the requirements of the Act in ending the periodic tenancy.

Section 45(3) of the Act also states that a tenant may end a tenancy if the landlord has failed to comply with a material term of the tenancy and has not corrected the breach within a reasonable period after the tenant gives the landlord written notice of the breach. In this case, I find that the tenant provided insufficient evidence of the material

breach by the landlord, namely the excessive noise and also failed to give the landlord a written notice regarding the breach. I also find that a verbal conversation with the landlord's agent, without supporting documentary evidence, is not sufficient for the tenant to rely on this provision of the Act to end the tenancy in the manner it was.

I accept the evidence of the landlord that she mitigated her loss by re-renting out the rental suite in the middle of May, 2013 and as a result, I find that the landlord is entitled to keep the tenant's security deposit in satisfaction of the losses incurred.

The tenant was explained this during the hearing and as a result, the landlord agreed to forgo her application requesting the return of the filing fee for making the application.

Conclusion

For the reasons set out above, I order the landlord to keep the tenant's security deposit in the amount of \$475.00 and dismiss the landlord's application for the return of the filing fee.

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 02, 2014

Residential Tenancy Branch

