



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on October 28, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered an oral tenancy agreement that provided that the tenancy would start on September 1, 2013 and continue on a month to month basis. The rent was \$850 per month payable on the first day of each month.

A dispute arose between the parties and the tenant vacated the rental unit on September 29, 2013 without giving proper notice to the landlord. The landlord was not able to rent the rental unit for October 2013 despite sufficiently attempting to mitigate her loss.

The tenant does not dispute that she owes rent for September. She testified she failed to properly fill out the rent cheque through inadvertence and she lived in the rental unit for that period.

However, the tenant submits that she is not obliged to pay the rent for October for the following reasons:

- Approximately three weeks after the start of the tenancy the fridge failed to work and she lost a significant amount of food. The landlord promised to reimburse her for the lost food but has failed to do so. The landlord testified that she was prepared to reimburse the tenant but the tenant has failed to provide her with receipts.
- The tenant testified the landlord has refused to talk to her to facilitate a settlement and all dealings have been through the upstairs tenant.
- The upstairs tenant told her that the landlord advised that she was free to leave.
- The upstairs tenant interfered with her enjoyment of the rental unit by smoking marijuana.

The landlord testified the tenant never gave written notice she was vacating and the first time she became aware the tenant was vacating was at the end of September when she was told the tenant was leaving. The landlord testified that she was working out of town and was not permitted by her employer to talk on her phone while working. As a result she told the tenant she should deal with the upstairs tenant.

Analysis - Monetary Order and Cost of Filing fee

After considering all of the relevant evidence I determined the tenant is responsible to pay the rent for September and October. Section 44 of the Residential Tenancy Act provides that a **tenancy ends only if one** or more of the following applies and then sets out a list. The ways relevant to this case includes a mutual agreement to end the tenancy. However, the mutual agreement must be in writing. I do not accept the submission of the tenant that when the upstairs tenant told the tenant that she could leave that this amounts to a verbal eviction that is effective in law or that this is a mutual agreement to end the tenancy as contemplated by section 44(1)(c) of the Act. It is possible for the tenant to end the tenancy by Notice but to do so the Notice must be in writing and it must provide the landlord with a clear month notice. The tenant failed to give written notice and failed to give the clear month. Finally, the Act provides that the tenant can end the tenancy if the landlord has breached a material term of the tenancy agreement and the landlord not corrected the situation within a reasonable period after the tenant gives written notice of the failure. The tenant has not given written notice of a breach of a material term. Further, the complaints are not so serious as to amount to the breach of a material term.

As a result I determined the landlord is entitled to \$850 for non-payment of the rent for September 2013. The tenant does not dispute this claim. In addition the landlord is entitled to \$850 for loss of rent for October 2013 as the landlord lost rent for that month because the tenant failed to give proper notice to end the tenancy as required by the Residential Tenancy Act.

The tenant alleges she is entitled to compensation for loss of food caused by the defective fridge. The landlord alleges the tenant damaged the rental property. Each party would have to file an Application for Dispute Resolution to have those issues determined if they are unable to reach a settlement.

I granted the landlord a monetary order in the sum of \$1700 plus the sum of \$50 in respect of the filing fee for a total of \$1750.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: February 06, 2014

Residential Tenancy Branch

