



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, MNDC, FF
Tenant: CNR, CNL, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel two notices to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The tenant had arranged for a witness to be available but she was not called to provide any testimony.

At the outset of the hearing the parties confirmed that the tenant had vacated the rental unit and as such the landlord no longer required an order of possession and the tenant no longer required to cancel any notice to end tenancy. As such, I amend the landlord's Application to exclude the matter of possession and the tenant's Application to exclude the request to cancel notices to end tenancy.

I also advised both parties that even though they had both provided evidence regarding the condition of the rental unit at the end of the tenancy there was no Application before me seeking compensation for damage or cleaning of the rental unit and as such I would not be considering any of that evidence in this hearing. I advised that the landlord remained at liberty to file a separate Application for any such compensation.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for return of all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 5, 2013 for a 1 year fixed term tenancy beginning on February 1, 2013 that converted to a month to month tenancy on February 1, 2014 for a monthly rent of \$1,675.00 due on the 1st of each month with a security deposit of \$837.00 paid.

The tenant submits that on January 6, 2014 the landlord informed her verbally that he wanted to move back into the rental unit on March 1, 2014. The tenant submits as a result of this conversation she looked for a new rental unit and in mid February she entered into a tenancy agreement for a new rental unit that would begin on March 1, 2014.

The tenant submits that when she had been looking for a new place a property manager advised her that because the landlord was ending the tenancy so he could move in the tenant would be entitled to receive her last month of rent free. The tenant submits she put a stop payment on her February, 2014 rent cheque and advised the landlord that she had done so.

The landlord submits that it was the tenant who contacted him and told him that she was going to be looking for a new place to live and that in response he told her that if she was going to do that he would move back in to the rental unit. The landlord did not issue the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property.

When the landlord attempted to cash the tenant's rent cheque for February 2014 it was returned as a stop payment and he issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent. This Notice was issued on February 7, 2014 with an effective vacancy date of February 17, 2014 citing the tenant had failed to pay rent in the amount of \$1,675.00.

The landlord submits that they completed a move out inspection on March 2, 2014 and is seeking per diem rates for rent for the first two days of March, 2014. The tenant submits that she had moved everything out by March 1, 2014 and only returned on the 2nd for the move out inspection.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member own, all the voting shares;

- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

From the testimony of both parties I find the landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use of Property as allowed under Section 49. While I accept that the parties have different versions of who verbally gave a notice to end the tenancy Section 52 of the *Act* requires that for a notice to be effective it must be in writing; be signed and dated by the person giving the notice; give the address of the rental unit; state the effective date of the notice; and when given by the landlord state the reasons for the Notice and be in the approved form [available on the Residential Tenancy Branch website].

As the parties confirmed through their evidence and testimony the discussions around the landlord's intent to move in to the rental unit were either verbal or by text message, I find that none of these discussions or notifications are notices to end tenancy as required under Section 52. As such there was no enforceable notice that the tenancy was going to end given by either party until the tenant failed to pay rent and the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent.

As the compensation allowed for under Section 51 requires that the tenant receive a notice to end the tenancy under Section 49 and I have found that the tenant did not receive such a notice I further find that she is not entitled to any compensation allowed under Section 51. Therefore, I find the tenant did not have authority under the *Act* to withhold the payment of rent for the month of February 2014.

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.

In regard to the landlord's claim for the tenant failing to move out of the rental unit prior to the end of February 2014, I find that even if I were to find that the tenant has violated the *Act*, regulation or tenancy agreement the landlord has not suffered any loss that requires the tenant to provide compensation to the landlord.

If the tenant's actions had caused the landlord to lose rental income from a new tenant then the landlord would have suffered a loss. However, as the landlord's intent was to move in to the rental unit and he has not provided any evidence that he suffered any other loss as a result I find he has failed to establish any losses resulting from the tenant's overholding of the rental unit. I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,725.00** comprised of \$1,675.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$837.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$887.50**.

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.

As I have found the landlord's Application was successful and as such he is entitled to retain the security deposit I dismiss the tenant's Application for return of the deposit and her filing fee in its entirety.

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: March 28, 2014

Residential Tenancy Branch

