



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for damage to the rental unit, to keep the Tenant’s security deposit and to recover the filing fee for the cost of the Application.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as evidence prior to the hearing. The Landlord testified that she had served the Tenant with a copy of the Application, the Notice of Hearing documents and the documentary evidence by registered mail on November 22, 2014; the Landlord also confirmed that the Application had been amended on November 20, 2014 prior to being served to the Tenant on November 22, 2014.

Section 90(a) of the Residential Tenancy Act (the “Act”) provides that a document served by registered mail is deemed to have been received five days after it is mailed. The Landlord provided the Canada Post tracking number and mailing receipt as evidence of this method of service and as a result, I find that the Landlord served the required documents to the Tenant in accordance with Section 89(1) (c) of the Act and the Tenant is deemed receipt of these on November 27, 2013.

However, the Tenant failed to appear for the hearing and did not provide any evidence prior to the hearing, despite being served notice of this hearing in accordance with the Act. As a result, the hearing continued in the absence of the Tenant and the undisputed evidence of the Landlord has been carefully considered in this decision.

At the start of the hearing the Landlord testified that she was seeking monetary compensation from the Tenant in the form of lost rent; this had also been documented by the Landlord in the details section of the Application. As a result, I amended the Application, pursuant to Section 64(3) (c) of the Act, to include money owed to the Landlord for compensation or loss under the Act, regulation or tenancy agreement.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for two weeks of lost rent because the tenant broke a fixed term tenancy?
- Is the Landlord entitled to a Monetary Order for damage to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's claim?

Background and Evidence

The Landlord testified that the tenancy for the rental unit began on November 25, 2012 for a fixed term. After this fixed term had expired, another fixed term tenancy agreement was entered into which ended on September, 2013. The Tenant and Landlord then entered into a final tenancy agreement on August 1, 2013 for a fixed term ending on December 31, 2013 which was then due to continue on a month to month basis thereafter; this tenancy agreement was provided as evidence for the hearing.

Rent was established at the start of the tenancy in the amount of \$1,095.00 which remained unchanged during the duration of the tenancies; according to the last tenancy agreement, rent was to be paid to the Landlord by the Tenant on the first day of each month. At the start of the tenancy the Tenant had paid a security deposit in the amount of \$547.50 to the Landlord on November 11, 2012 which the Landlord still retains.

The Landlord testified that the Tenant had sent her a text message on September 23, 2013 informing that she would be leaving the tenancy by October 31, 2013 or sooner. The Landlord replied back on the same day informing the Tenant that she was in a fixed term tenancy and that she would try and find new renters but that the Tenant would be obligated to pay any costs for loss of rent for the remainder of the fixed term. The text messages were provided as evidence.

The Landlord testified that she immediately made efforts to rent out the unit for November, 2013 but was unable to rent it out until November 15, 2013. As a result, the Landlord claims loss of rent for the two weeks of November, 2013. The Landlord testified that the Tenants left the rental suite on October 31, 2013 by vacating her rental suite and leaving the keys under the door mat. The Tenant then provided her forwarding address to the Landlord on November 5, 2013 by text message which the Landlord received.

The Landlord testified that Tenant also caused damage to the rental suite and now claims for the following items:

- \$66.06 for a broken bathroom faucet
- \$40.92 for a broken refrigerator door shelf retainer bar
- \$30.37 for a broken refrigerator drawer support rail for the left side
- \$100.00 for the cost of installing the broken items above

The Landlord provided photographs of the broken items and receipts supporting the cost of these items. The Landlord testified that the refrigerator parts had to be ordered on line from the fridge company and these were purchased from the cheapest on line provider. The Landlord also provided a document titled 'Completion Certificate' which the Landlord was issued by the builder of the home indicating that the home was brand new with none of the damages being claimed by the Landlord. The Landlord testified that the rental unit had been rented to the Tenant shortly after this document was issued to her by the builder indicating that the property was brand new at the start of the tenancy.

Analysis

Although a notice to end tenancy or a forwarding address cannot be provided by text message, I find that the Landlord had acknowledged receipt of the Tenant's text message which detailed the Tenant's intention to end the tenancy and her forwarding address on November 5, 2014. As a result, I find that the Landlord made the Application to keep the Tenant's security deposit for the lost rent within the 15 days stipulated by section 38(1) (d) of the Act.

The Act states that neither a Landlord nor Tenant can end a fixed term tenancy except for cause or by agreement of both parties. In addition, Policy Guideline 30 to the Act further states that a Tenant may not use the one month notice provisions of the Legislation to end a tenancy prior to the end of the fixed term.

As a result, I find that the tenant failed to abide with the requirements of the Act in relation to the fixed term tenancy and ended the tenancy without cause or the consent of the Landlord. Section 7(2) of the Act states that a party claiming for compensation for loss under the Act must do whatever is reasonable to minimize the loss.

As a result, I accept the Landlord's testimony that she tried to re-rent out the unit for the period of November, 2013 but could not do so until the middle of the month; therefore, I award the Landlord \$547.50 in lost rent for November, 2013. As the landlord already holds a security deposit in this amount, I allow the Landlord to retain the Tenant's security deposit in full satisfaction of the Landlord's claim for lost rent, pursuant to Section 38(4) (b) of the Act.

In relation to the Landlord's claim for damages to the rental suite, I accept the undisputed testimony of the Landlord along with the photographic evidence, receipts for the broken parts and the cost of installing these parts, and I find, on the balance of probabilities, that the Tenant is responsible for these damages. As a result, I allow the Landlord's claim for damages to the rental suite in the amount of \$237.35.

I also award the Landlord the \$50.00 filing fee for the cost of making this application pursuant to section 72(1) of the Act. Therefore the total amount awarded to the Landlord is \$287.35.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$287.35**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make the payment in accordance with the Landlord's instructions.

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 10, 2014

Residential Tenancy Branch

