



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR

Introduction

This hearing dealt with applications by both the tenant and the landlord. The tenant applies for the return of her security deposit and the landlord applies for a monetary order for unpaid rent.

The landlord was represented at the teleconference hearing by the property manager and the tenant was represented by two advocates.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agree the tenancy started April 1, 2013 and the tenant was obligated to pay \$900.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$450.00. The tenant moved out of the rental unit on December 31, 2013.

The landlord gave evidence that the tenant did not give notice that she was moving out. The landlord found out the tenant had moved out when she was told by another tenant on January 2, 2014. The landlord's evidence is that the tenant did not provide a forwarding address; the landlord only became aware of the tenant's new address when she received the Tenant's Application for Dispute Resolution.

The landlord's evidence is that the tenant had told her the tenant was looking for a new place. The landlord's evidence is that the tenant was unhappy with the rental unit because she perceived there was a moisture problem.

The landlord gave evidence that she advertised the rental unit immediately when she discovered the tenant had moved out. The landlord had to replace the living room carpet before the rental unit could be re-rented. The landlord's evidence is that the landlord was unable to re-rent the rental unit until February 1, 2014. The landlord seeks to retain the security deposit as compensation for a loss of rental income caused by the tenant's failure to give notice.

The tenant's position is that she moved out of the rental unit on the advice of her midwife and Northern Health. She was concerned that her children were becoming ill as a result of mold buildup in the rental unit. The tenant provided a copy of a letter from her midwife dated December 3, 2013. The letter indicates the midwife's view that the rental unit "has become a health hazard to her and her family, especially her three week old daughter" and "The condition of the apartment has continuously deteriorated and black mold has now developed in the washroom, the parent's bedroom and the living room. The parent's bedroom is also very cold and moist, so that it is not safe to use with a newborn."

The tenant also provided a copy of a letter dated December 17, 2013 from an Environmental Health Officer at Northern Health. The officer states she inspected the rental unit on December 17, 2013 and confirms there is some mould growth on the window sills in at least two areas.

The landlord's evidence is that the tenant did not provide these two letters to the landlord before the tenant moved out. The landlord's position is that in a northern climate windows get "muck" on the inside and it is a matter of housekeeping. Her evidence is that the tenant kept a humidifier running in the rental unit and should have had a dehumidifier. The landlord's evidence is that since the new tenants moved in there is no problem with moisture in the rental unit.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on December 31, 2013. I accept the landlord's evidence that the tenant did not provide her forwarding address to the landlord in writing prior to making her Application for Dispute Resolution. For that reason, the 15 day period set out in Section 38(1) had not commenced at the time the tenant filed her application. The tenant's application is premature, and for that reason the tenant's application is dismissed. If not for the landlord's application, which I have dealt with below, I would give the tenant leave to reapply.

Where a tenant has concerns that a landlord may be breaching the landlord's duty, pursuant to Section 32 of the Act, to maintain residential property in a state of repair that complies with the health, safety and housing standards required by law, the tenant may apply for an order that the landlord make repairs. In this case, the tenant did not do so.

Pursuant to Section 45(3), where a tenant is of the view that the landlord has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. In this case, the tenant did not follow the process set out in Section 45(3) because she did not give the landlord written notice that she considered a material term to have been breached. I accept the evidence of the landlord that the tenant did not provide the landlord with either the letter from the midwife or the letter from Northern Health prior to ending the tenancy. I find the tenant did not follow the process set out in Section 45(3). Further, I find the tenant has not provided a reason for ending her tenancy early that is in compliance with the Act.

I find that although the tenant had indicated to the landlord that she wished to move, she did not give the landlord proper notice of her move as required by Section 45(1). I find the landlord has proven a loss of rental income stemming from the tenant's failure to give notice that she was moving out. The landlord is entitled to compensation for that loss, and I set that compensation at \$450.00. I order that the landlord retain the security deposit of \$450.00 in satisfaction of the claim.

Conclusion

The tenant's application is dismissed. The landlord may retain the security deposit.

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: April 10, 2014

Residential Tenancy Branch

