



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & 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.

It is unclear which Notice the landlord is relying on. The one month Notice to End Tenancy which is in the materials provided by the landlord is dated April 22, 2014 and sets the end of tenancy for May 4, 2014. However, there is a one month Notice to End Tenancy in the materials provided by the Tenant that is dated April 4, 2014 and sets the end of tenancy for May 30, 2014. The landlord testified she served the tenant with the Notice to End Tenancy on April 4, 2014.

It is unclear when the landlord served the Application for Dispute Resolution. The tenant stated it was not served until June 4, 2014 although the Application for Dispute Resolution was filed on April 22, 2014. When asked about service the landlord returned and gave testimony about the service of the Notice to End Tenancy.. 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 an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2013. The rent is \$900 per month payable on the first day of each month. The tenant paid a security deposit of \$450 at the start of the tenancy. The rent has been paid including the rent for June 2014 which was accepted without condition.

The two one month Notices to End Tenancy relied produced by the parties have not identified the grounds for termination.

The landlord produced a number of photographs that show the tenant has left considerable garbage in and around the rental property. The landlord also produced copies of notes she has given to the Tenant stating the tenant must vacate the rental unit. The tenant(s) continues to live in the rental unit.

Analysis - Order of Possession:

I dismissed the landlord's application for an Order for Possession. One of the fundamental principles of our legal system is that a party must have notice of the claim against them. The landlord failed to identify the grounds for termination in either of the Notices. On that basis alone the Notice must be cancelled. It may be that the landlord has sufficient grounds. However, the law requires that landlord identify those grounds in the Notice so that the tenant has a proper opportunity to respond.

Further, the landlord failed to prove that she served the Application for Dispute Resolution within 3 days of receiving it from the Residential Tenancy Branch Registry.

Finally, the landlord accepted the rent for May and June unconditionally and thereby re-instated the tenancy. If the landlord wishes to continue to rely on the Notice the landlord must clearly state she is accepting the rent for “use and occupation only.”

I recognize the landlord will be upset about the result of this decision. However, the law must be followed especially when one is dealing with the termination of a tenancy. The landlord is encouraged to get legal assistance.

In summary I order that the one month Notice to End Tenancy dated April 4, 2014 and April 22, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Analysis - Monetary Order, Security Deposit and Cost of Filing fee

The Application for Dispute Resolution seeks a monetary order of \$900 plus the cost of the filing fee. The landlord testified this claim is for the cost of cleaning the rental unit after the tenant vacates. The landlord failed to produce any proof as to the cost and she did not produce evidence as to any costs incurred to date. The tenant continues to reside in the rental unit. I determined this claim is premature and the landlord failed to produce sufficient evidence to support this claim. As a result I order the application for a monetary order, the right to keep the security deposit and the cost of the filing fee be dismissed. The landlord has liberty to re-apply for a monetary order and security deposit.

Conclusion:

For the reasons stated above I ordered that the landlord’s application be dismissed.

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: June 13, 2014

Residential Tenancy Branch

