



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for compensation for unpaid rent and authorization to retain part of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The parties participated in a previous dispute resolution hearing on January 24, 2014, with a different Arbitrator, to deal with cross applications. By way of that previous proceeding the security deposit has been disposed of and the tenant provided a Monetary Order reflecting return of the security deposit less an award to the landlord for cleaning costs. As the security deposit has already been dealt with it is not a matter that is before me and the Monetary Order issued to the tenant remains enforceable.

Upon review of the previous decision, and the clarification issued by the Arbitrator on February 25, 2014, I note the landlord was given liberty to make this application for loss of rent. As such, I proceed to consider the claim for rent made under this Application for Dispute Resolution.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation from the tenant for rent?

Background and Evidence

It was undisputed that the tenants were required to pay rent of \$1,675.00 on the 1st day of every month under the terms of tenancy and that the tenancy was set to end on September 30, 2013 pursuant to a tenant's notice to end tenancy.

The landlord claimed the tenant did not finish vacating and cleaning the rental unit until October 5, 2013 and the landlord is seeking compensation for the period of October 1 – 5, 2013 in the amount of \$270.00. The landlord testified that the rental unit was re-rented effective October 15, 2013.

In support of the landlord's position, the landlord pointed to an email she received from her landscaper on October 3, 2013 where he states, in part:

- “there is garbage and rubbish all over the place behind the house”
- “there was someone there unloading items from the house”

The landlord also pointed to the tenant's text message sent to her on October 4, 2013 which includes the following statements:

- ...”we are pretty much out now cleaned out the house and did all the carpets today, [name of co-tenant] just has to go back tomorrow to clean up some garbage out back...”

The tenant submitted that they had until noon on October 1, 2013 to vacate the rental unit according to the Residential Tenancy Branch and they did vacate the rental unit on October 1, 2013. The tenant pointed to a copy of her current tenancy agreement showing her current tenancy commenced October 1, 2013 and a receipt for a moving truck that was rented the evening of September 30, 2013 and returned 24 hours later on October 1, 2013.

The tenant acknowledged that some garbage was left out back but that the co-tenant picked it up on October 2 or 3, 2013. The tenant submitted that the carpets were cleaned before October 4, 2013 but the tenant did not provide a carpet cleaning receipt.

The tenant also submitted that the landlord failed to contact the tenants to make arrangements to return the keys or do an inspection before the tenancy ended. The tenant pointed out that she had sent a text message to the landlord on September 28, 2013 and there was no response. Rather, the next communication was from the tenant on October 4, 2013. The tenant submitted that the landlord retrieved the keys on October 9, 2013 but they were available as of October 1, 2013.

The landlord read the text message of September 28, 2013 during the hearing and it did not pertain to the end of the tenancy. The landlord submitted that there was no need to respond to it.

The landlord explained that the landlords live in another town which is why there was a delay in retrieving the keys; however, the landlord maintained the position that the tenants failed to vacate and clean by the date required under the Act.

Analysis

The date a tenant is required to vacate a rental unit is dependent on how the tenancy is ended. Since the tenancy ended pursuant to a tenant's notice to end tenancy and the tenant was required to pay rent on the 1st day of every month, the effective date of the tenant's notice would be the last day of the month. In other words, the tenant must vacate before the 1st day of the following month. The Act also provides that a tenancy ends at 1:00 p.m. unless the parties agree otherwise. Based upon the facts before me, I find the tenancy ended and the tenant was required to vacate the rental unit by 1:00 p.m. on September 30, 2013.

The Act requires that at the end of the tenancy the tenant is to leave the rental unit vacant, which means removal of all of their possessions and garbage, and reasonably clean. Therefore, the tenant was required to have finished removing all of their possessions, including garbage, from the property and finish cleaning it by 1:00 p.m. on September 30, 2013.

It is undeniable that the tenant failed to meet the above requirements as the tenant's evidence clearly shows that the moving truck was not rented until 5:51 p.m. on September 30, 2013.

I find the landlord has provided sufficient evidence to satisfy me that the tenants did not finish cleaning and removing all of their possessions from the property until October 5, 2013. I find the tenant's contradictory testimony not credible since her own text message clearly indicates the carpets were cleaned on the day the text message was sent and that garbage was to be collected the following day. Therefore, I find the tenant had not vacated the rental unit until October 5, 2013 as submitted by the landlord.

Under section 57 of the Act, where a tenant does not vacate a rental unit when the tenancy has ended the landlord may seek compensation for "over-holding" calculated on a per-diem basis.

In light of all of the above, I find the landlord has established an entitlement to compensation from the tenant under the Act in the amount of \$270.00, as claimed. I further award the landlord recovery of the filing fee paid for this application. Therefore, I provide the landlord with a Monetary Order in the sum of \$320.00 to serve and enforce as necessary.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$320.00 to serve and enforce as necessary.

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: July 11, 2014

Residential Tenancy Branch

