



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant initially attended the hearing, the male landlord dilled into the hearing 15 minutes late. The parties gave sworn testimony and the landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord provided a letter in documentary evidence dated July 08, 2014, confirming that the tenant's damage deposit has been returned and that the respondent acting on behalf of the landlord rescinds the 10 Day Notice to End Tenancy for unpaid rent or utilities.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this month to month tenancy started on February 01, 2005. Rent for this unit was \$2,400.00 per month and was due on the 1st of each month. The tenant paid a security deposit of \$1,100.00 which has been returned to the tenant.

The tenant testified that the landlords served the tenant with a Two Month Notice to End Tenancy on April 24, 2014. This Notice had an effective date of July 01, 2014; the tenant withheld their last month's rent in compensation for the Notice and vacated the rental unit on July 01, 2014. The tenant testified that her niece also lived in the unit with the tenant and her niece moved out at the end of May. The tenant testified that her niece did not get compensation from the landlord for having to move out.

The tenant testified that the landlord did return the tenant's security deposit but did not return any accrued interest on the deposit. The tenant seeks a Monetary Order to recover the accrued interest from February 01, 2005. The tenant also seeks to recover the filing fee of \$50.00 as this application was filed to cancel the 10 Day Notice to End Tenancy as the tenant was entitled to withhold the rent for June in compensation for the Two Month Notice before the landlord rescinded the 10 Day Notice.

The landlord agreed that the tenant was served with the Two Month Notice to End Tenancy and served the 10 Day Notice before the landlord realized that the tenant was entitled to withhold the rent for June in compensation for the Two Month Notice. The landlord testified that he rescinded the 10 Day Notice as soon as he understood this and returned the tenant's security deposit.

The landlord does not dispute any interest payable on the security deposit. The landlord does however dispute that the tenant's niece is also entitled to a further amount in compensation as this tenancy was in the name of this tenant and the *Act* provides for compensation equivalent to one month's rent only.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties, With regard to the tenant's application to cancel the 10 Day Notice to End Tenancy; as this Notice has been withdrawn by the landlord, as it was issued in error, I find the Notice is hereby cancelled.

With regard to the tenant's application for a Monetary Order for a further amount of compensation over and above the amount equivalent to one month's rent because her niece also had to vacate the rental unit; I refer the parties to s. 51(1) of the *Act* which states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49[*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As the tenant did receive this amount in the form of rent abatement for June's rent then the tenant has received the compensation due in accordance to s. 51(1) of the *Act* and no further compensation is due for any other occupants of the rental unit. This section of the tenant's claim is therefore dismissed.

With regard to the tenant's claim to recover the accrued interest due on her security deposit. I have calculated the accrued interest on the Residential Tenancy interest

calculator and find the amount due to the tenant is \$38.94. The tenant is therefore entitled to recover this from the landlords.

As the tenant filed this application prior to the landlords rescinding the 10 Day Notice to End Tenancy, I find the tenant is entitled to recover the filing fee of \$50.00 from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$88.94. The Order must be served on the respondents. Should the respondents fail to comply with the Order the Order may be enforced through the Provincial Court as an Order of that Court.

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 30, 2014

Residential Tenancy Branch

