



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNSD , FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord to retain the security deposit for rent owed for the first month of the tenancy, due to the tenant ending the tenancy without proper notice under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of rent and to retain the security deposit in satisfaction of the claim?

Background and Evidence

The landlord testified that the tenancy agreement was signed on March 19, 2014 for a tenancy that was scheduled to start on April 1, 2014. The rent was set at \$2,200.00 and a security deposit of \$1,100.00 was paid by the tenant.

The landlord stated that, after the agreement was signed, the parties did a move-in condition inspection at which time the tenant expressed concerns about the state of the rental unit. The landlord testified that the tenant later advised the landlord that he and his family would not be moving into the unit at all.

The landlord testified that they agreed to address the deficiencies put forth by the tenant, but he was not willing to continue with the tenancy. The landlord stated that the unit was re-rented but they lost one month of rent due to the tenant's breach of the Act and agreement and feel entitled to compensation. However, the landlord is only

seeking to retain the tenant's security deposit in compensation for the loss, plus the \$50.00 cost of filing the application.

The tenant acknowledged that the tenant refused to move into the unit after signing the agreement and paying the security deposit. According to the tenant, the problems pointed out to the landlord were not adequately addressed, despite the fact that the landlord had 10 days to deal with the issues.

The tenant pointed out that they could not take occupancy under the circumstances as there were both hygiene and safety issues that would place his family at risk and would be difficult to address after they moved their possessions into the unit.

Analysis

I find that section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that section 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and either a landlord or a tenant may make an application for dispute resolution if they cannot resolve a dispute relating to the Act or the Agreement.

In this instance I find that the parties entered into a written tenancy agreement which stated that the tenant would take possession on April 1, 2014.

I find that a tenant is at liberty to terminate a tenancy but must do so in compliance with the Act or liability may follow.

Section 45 of the Act gives the tenant a right to end a periodic month-to-month tenancy by giving the landlord written notice effective on a date that: (a) is not earlier than one month after the date the landlord receives the notice, and, (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A fixed term tenancy cannot be validly ended by a tenant until the expiry date of the contract, otherwise the tenant will incur liability for losses that result from the premature termination of the contract.

However, if there is a breach of a material term by the landlord, that has not been corrected after a written demand, the tenant may choose to make an application for Dispute Resolution to obtain an order terminating the tenancy for cause on this basis.

In this instance, I find that the tenant felt that the tenancy was unworkable and merely chose to unilaterally terminate the tenancy without first obtaining an order. I find that this action is a violation under the Act and terms of the tenancy agreement.

Even if I accept the tenant's position that the landlord was first to violate the Act and agreement, in failing to provide a clean, safe residence in good repair, this fact would still not justify the tenant's refusal to comply with their tenancy agreement.

Section 7 of the Act states that, if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

I find that the tenant also had the option under section 7 of the Act to seek compensation from the landlord for loss of value or reimbursement of costs stemming from the landlord's noncompliance. In any case, the tenant did not make an application for dispute resolution.

The landlord's application indicates that they incurred a loss of \$2,200.00, but are only seeking to retain the \$1,100.00 security deposit. Based on the evidence, I find that the landlord is entitled to the tenant's \$1,100.00 security deposit in satisfaction of the claim.

I find that the landlord is entitled to a monetary order to reimburse them for the cost of the application and grant the Landlord an order against the tenant for \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted a Monetary Order for loss of revenue and an order to retain the tenant's 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: August 12, 2014

Residential Tenancy Branch

