



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the loss of income, cost of removing the tenant's belongings, for the filing fee and to retain the security deposit in partial satisfaction of his claim. The tenant applied for a monetary order for compensation and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for the loss of income, cost of cleaning and the filing fee? Is the tenant entitled to a monetary order for compensation and the filing fee?

Background and Evidence

The tenancy started in April 2013 and ended on November 24, 2014. The rent was \$925.00 due on the first day of each month. Prior to moving in, the tenant paid a security deposit of \$500.00.

The landlord testified that he intended to sell the rental unit and on April 01, 2014, he notified the tenant by text message, of his intentions to do so. The tenant testified that she allowed showings to prospective buyers. On November 15, 2014 the tenant gave notice to end the tenancy and moved out on November 24, 2014. The landlord stated that he did not look for another tenant as the home was up for sale. He also stated that he had to remove and dispose of the belongings left behind by the tenant and carry out some roof and general maintenance. The tenant agreed that she had left behind some items and agreed to pay \$50.00 towards the cost of taking these items to the dump.

The tenant stated that during the tenancy she was denied the quiet enjoyment of the premises due to harassment by the landlord. The tenant stated that the landlord sent her multiple text messages asking for rent and appointments to show the house to prospective buyers. The tenant stated that she was forced to move out and wants the landlord to pay the security deposit and first month's rent at the new place.

Analysis

Landlord's application

The parties have agreed that the tenant owes the landlord \$50.00 for the disposal of the tenant's belongings.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of December 2014.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord intended to sell the rental unit at the time the tenancy ended and at the time of this hearing the home was still listed for sale. Therefore the landlord did not look for a tenant as he has no intention of renting the unit.

Accordingly, I find that the unit is not available for rent and therefore the landlord did not suffer a loss of income.

Since the landlord has proven a portion of his claim I award the landlord the recovery of the filing fee of \$50.00.

Tenant's application:

The tenant testified that she suffered a loss of quiet enjoyment due to the actions of the landlord.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control.

Based on the testimony of both parties, I find that the tenant has not proven harassment by the landlord. If the tenant suffered a loss of quiet enjoyment, by not applying for dispute resolution during the tenancy, the tenant took no steps to seek a solution to the alleged problem. I further find that the tenant is now making a monetary claim for compensation after the tenancy ended and in response to the landlord's application for dispute resolution. Accordingly, I find that the tenant is not entitled to compensation because she has not proven and also failed to take steps to address the alleged issue in a timely manner.

Since the tenant has not proven her case, she must bear the cost of filing her application.

Overall the landlord has established a claim for \$100.00 which consists of \$50.00 for the disposal of the tenant's belongings and \$50.00 for the filing fee. I order that the landlord retain this amount from the security deposit of \$500. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$400.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$400.00**.

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: December 23, 2014

Residential Tenancy Branch

