



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on November 10, 2014 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 23, 2014 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Parties agreed that the tenancy ended on October 31, 2014. The Landlord no longer requires an order of possession.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on October 1, 2012 for a one year fixed term and was continued for a second fixed term to end September 30, 2014. Rent of \$1,700.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit. No move in inspection was carried out. The Tenant moved out of the unit on October 31, 2014 and sent its forwarding address in writing to the Landlord by registered mail on November 5, 2014. The Landlord returned the security deposit to the Tenant and the cheque has not been cashed.

The Tenant states that in mid September 2014 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use (the "Notice"). The Landlord is not sure when the Notice was given to the Tenant. The effective date of the Notice is November 30, 2014. The Tenant states that they paid October 2014 rent and on October 7, 2014 gave notice to end the tenancy for October 31, 2014. The Tenant states that the Landlord has not provided the Tenants with the equivalent of one month's rent and claim \$1,700.00. The Tenant also seeks a determination that she rightfully has the security deposit.

The Landlord states that the Tenant was required to move out of the unit at the end of the fixed term and refused to do so. The Landlord states that although there is no requirement noted on the second tenancy agreement that at the end of the fixed term the Tenant must move out of the unit, this requirement was missed in error and that there was a clear intent held by each Party at the time of signing the agreement that the Tenant would move out of the unit at the end of the term. The Landlord states that the agreement was signed in a rush. The Landlord provides copies of email discussions between the Parties.

The Landlord states that the Landlord was then forced to serve the Tenant with the Notice. The Landlord argues that if the Tenant is to now receive the equivalent of one month's notice pursuant to the Notice the Tenant would be unjustly enriched from not

moving out when required under the tenancy agreement. The Landlord states that the Tenant is stopped by their own acts from denying that they were supposed to move-out of the unit at the end of September 2014.

The Landlord argues that the Tenant over held the unit in October 2014 and that by giving a late notice to end on October 31, 2014, the Landlord lost rental income for November. The Landlord states that the unit was occupied by the Landlord for the month of November 2014 while repairs to the unit were being made and that the unit was advertised for rent for December 2014. The Landlord claim lost rental income for November 2014.

The Landlord states that the Tenant's Agent attended the move-out inspection on October 31, 2014 but refused to sign the report. The Landlord states that the Tenant left the unit unclean and damaged, provided photos and receipts or invoices and claims as follows:

- \$100.00 estimated cost to repair the carpet left with two large stains. The Landlord states that this estimate was provided by a person residing in Washington State;
- \$116.31 for the cost of paint for the walls left with holes by the Tenant. The Landlord states that the unit was painted a year prior to this tenancy and was touched up at the end of the previous tenancy; and
- \$105.00 for the Landlord's labour in painting the whole unit.

The Tenant states that she was unaware of any stains on the carpet and that they may have been there at the outset of the tenancy. The Tenant states that the outset of the tenancy the unit was filthy, the carpets needed to be cleaned and there were numerous holes on every wall of the unit. The Tenant states that the only holes made by the Tenant were from a baby gate. The Tenant states that since the Landlord was trying to sell the unit, the Tenants patched all the holes themselves before they moved out.

The Landlord claims reimbursement of mail and photocopying costs in addition to the filing fee.

Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. There is nothing in the tenancy agreement that requires the Tenants to move out of the unit at the end of the term. The Landlord's oral evidence of intention of the Parties at the time of signing the second agreement is contradicted by the Landlord's emails dated September 5, 2014 wherein the Landlord refers to the Parties month to month tenancy. Further there is no indication in the only email correspondence prior to the signing of the second agreement and dated August 27, 2013 of the Landlord's intention that the Tenant would have to move out at the end of the second term. I find therefore that the Landlord has not substantiated on a balance of probabilities that the Tenant was required to move out at the end of the fixed term and I find that the tenancy became a periodic tenancy as of September 30, 2014.

Section 50 of the Act provides that if a landlord gives a tenant notice to end a periodic tenancy for landlord's use of property the tenant may end the tenancy early by giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. As the Landlord gave the Tenant the Notice and as the Tenant then gave at least 10 days notice to end its tenancy earlier than the effective date of the Notice I find that Landlord has not shown that the Tenant breached the Act or tenancy agreement by ending the tenancy for October 31, 2014. I find therefore that the Landlord has not substantiated that the Tenant did anything to cause the Landlord lost rental income and I dismiss this claim.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for 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. Based on the undisputed evidence that the

Tenant has not received the equivalent of one month's rent from the Landlord, I find that the Tenant has substantiated an entitlement to **\$1,700.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the Regulation provides that a duly completed condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Given that there is no move-in condition inspection and considering the Tenant's evidence of pre-existing damage to the walls of the unit, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant caused damage to the walls to the extent claimed by the Landlord. Although the Tenant did leave some holes by a baby gate, given the undisputed evidence of the Tenant's labour to patch all the wall damage and accepting that there was pre-existing wall damage, I find that the Tenant reduced the Landlord's overall costs to repair the walls and that as a result the Landlord has not shown any loss. I therefore dismiss the Landlord's claim for repairs to the walls. Given that the estimate for a repair of the carpet was provided by an individual that resides outside the country, I find that the Landlord has provided inadequate evidence of costs or effort to mitigate costs and I dismiss this claim.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As the Landlord failed to conduct a move-in inspection I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at the onset of the tenancy.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Landlord returned the security deposit within 15 days receipt of the Tenant's forwarding address I find that the Tenant is not entitled to any further amount. The Tenant may cash the Landlord's cheque.

As the Act only provides for the reimbursement of the filing fee, I find that the Landlord is not entitled to any other costs related to the dispute process and I dismiss the Landlord's claims for the costs related to copying and mail. As the Landlord's application has met with no success, I decline to award recovery of the filing fee.

As the Tenant's application has been entirely successful I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,750.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,750.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: December 05, 2014

Residential Tenancy Branch

