



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 convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, she sought to keep all or party of the security deposit, a Monetary Order for unpaid rent and to recover the filing fee. The Tenant's Application for Dispute Resolution indicated she sought a Monetary Order for return of double the security deposit, and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The Tenant also called her boyfriend, R.D., as a witness who also gave affirmed testimony.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent and to retain the security deposit?
2. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
3. Should either party recover the fee they paid to file their application?

Background and Evidence

The month to month tenancy began on May 18, 2014. Rent was payable on the first of the month in the amount of \$780.00 per month in rent in addition to payment of utilities.

The Tenant paid a security deposit of \$390.00 as well as a pet deposit of \$390.00 on May 11, 2014 by way of an interact e-transfer. Introduced in evidence was a copy of the confirmation of this e-transfer.

The Landlord testified that the Tenant gave verbal notice to end the tenancy on June 1, 2014. The Landlord further testified that she informed the Tenant that notice on the 1st was not sufficient to end the tenancy by June 30, 2014, as the Tenant was required to give such notice on May 31, 2014.

The Tenant testified that she told the Landlord she was moving out on May 31, 2014, and handed the Landlord her written notice while they, as well as the Tenant's boyfriend, were in the laundry room at the rental unit. The Tenant further testified that the Landlord wanted to speak to the Tenant about the notice, but that the Tenant was leaving for a staff party and did not have time.

Introduced in evidence was a copy of the hand written notice to end tenancy dated May 31, 2014, the Tenant says she gave to the Landlord on May 31, 2014 (the "Handwritten Notice").

The Landlord alleged that the Handwritten Notice had been fabricated, was not provided on May 31, 2014 as claimed by the Tenant, and that in fact, the first time she saw the Handwritten Notice was when she received the Tenant's hearing package on August 4, 2014. In support, the Landlord provided an email dated August 6, 2014 wherein the Landlord writes:

"I see you that you have included a notice to end tenancy dated May 31 2014.

You did not provide this to me until it was sent in the hearing package."

There is no indication that the Tenant responded to the August 6, 2014 email.

Also introduced in evidence was an email from the Landlord to the Tenant dated June 21, 2014 wherein the Landlord writes: "I am confused. I have been given mixed messages. I need confirmation in writing of when you wish to end tenancy at [address of rental unit]".

This message was also conveyed by text message, and provided in evidence was a screen shot of this text message from the Landlord to the Tenant dated June 23, 2014 wherein she writes:

"I am confused. I have been given mixed messages. I need confirmation in writin of when you wish to end tenancy. We have a legal and binding contract. Legally I can no enter into another tenancy agreement until I have."

[Reproduced as Written]

The Tenant's response to this text was also provided and indicates the Tenant wrote: "Just end it on the last day of the month....I feel like I am being tricked".

The Landlord provided in evidence a typed letter from the Landlord to the Tenant, dated June 29, 2014, and wherein the Landlord writes that she requires a written notice to end tenancy. Attached to the document is a document drafted by the Landlord for the Tenant's signature which provides for such written notice, as well as confirmation the Landlord may retain the security and pet deposit "to cover rent owed less pro rata if early move in of subsequent tenants occurs".

The Tenant vacated the premises on June 29, 2014.

By email dated June 29, 2014, the Tenant provided the Landlord with a written notice of her forwarding address for return of the security deposit.

The Landlord responded to the Tenant's June 29, 2014 email wherein she notes that she accepts the email as written notice to end the tenancy. The Landlord further writes that the effective date of the end of the tenancy is July 31, 2014.

The Landlord provided a copy of the move out Condition Inspection Report dated June 29, 2014 (the "C.I.R."). The Landlord indicated on this form that the end of the tenancy was July 31, 2014. The Tenant testified that the Landlord wrote the July 31, 2014 date in *after* the C.I.R. was signed by the Tenant.

The Tenant sent an email to the Landlord on July 1, 2014 wherein she writes:

"As per our conversation earlier today I am writing to confirm that I am completely moved out of your suite at [address of rental unit]. As of today, June 29 2014, the suite is available to be occupied by new tenants. My security deposit has not yet been returned, and I am owed money for hydro, aside from that there are no outstanding issues preventing you from signing a new lease with your next tenant. I hope this satisfies what you asked for in writing."

The Landlord provided significant evidence of her attempts to re-rent the rental unit in the form of emails and text messages between the parties regarding showings of the rental unit.

The Landlord testified that she was not able to rent the unit out until September 14, 2014, and that in fact, after being unsuccessful in finding another tenant, the Landlord moved into the rental unit.

The Tenant applied for dispute resolution on July 29, 2014 wherein she sought an Order for double the security deposit.

The Landlord applied for dispute resolution on August 11, 2014 wherein she sought a Monetary Order for \$780.00 representing rent for the month of July 2014, to retain the

security deposit and pet deposit in compensation for this amount and recovery of the filing fee.

When asked to respond to the Landlord's allegation that the Handwritten Notice was fabricated, the Tenant responded as follows:

"the Landlord was trying to trick me to steal my money"; and

"I deliberately did not respond to her as we have dealt with landlord's like this in the past."

The Tenant then called her boyfriend, R.D., as a witness. He testified that he was present when the Tenant wrote the Handwritten Notice and that he saw the Tenant give the document to the Landlord. When asked where this occurred, he stated it was in the front yard.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the tenancy ended on July 31, 2014.

Section 45 of the Act provides as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) Is not earlier than one month after the date the landlord receives the notice, and
- (b) (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.

I accept the Landlord's evidence that the Tenant gave verbal notice to end the tenancy on June 1, 2014. I do not accept the Tenant's evidence that she gave verbal and written notice on May 31, 2014.

I accept the Landlord's evidence that the first time she saw the May 31, 2014 Written Notice was when she received the hearing package on August 4, 2014. I make this finding based on the following:

- the evidence indicates that the parties communicated by text and email and aside from this document, no other communication between the parties was hand written;
- the Tenant made no reference to this document, despite the Landlord's subsequent requests for such written notice in her June 21, 2014 email to the Tenant, her June 23, 2014 text message to the Tenant, and her June 29, 2014 letter to the Tenant;
- in the Tenant's email response to the Landlord on July 1, 2014 she writes "I hope this satisfies what you asked for in writing." It is incredulous to believe that the Tenant, in response to the above mentioned requests for written notice, would not have simply reminded the Landlord that she had already provided the May 31, 2014 Written Notice to the Landlord on May 31, 2014; and
- while not determinative, it is noted that the Tenant's own witness contradicted her evidence as to where the conversation and delivery of the May 31, 2014 Written Notice allegedly occurred on May 31, 2014; the Tenant said it was in the laundry room and the Tenant's boyfriend said it was in the front yard.

The evidence establishes that the Landlord made her best efforts to rent the unit out after the Tenant gave verbal notice. However, the Landlord could not end the tenancy until she received written notice pursuant to sections 45(4) and 52 of the Act. I accept the Landlord's evidence that she received such written notice on June 29, 2014. Consequently, the effective date of the notice, pursuant to section 45, is July 31, 2014.

The Landlord applied for dispute resolution within 15 days after the date the tenancy ended as required by section 38 of the Act. I find that the Landlord is entitled to a Monetary Order pursuant to section 67 of the Act in the amount of \$830.00 representing the \$780.00 in rent owing for July 2014 and the \$50.00 fee paid to file her application. I order that the Landlord retain the security deposit and pet damage deposit of \$780.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$50.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenancy ended on July 31, 2014. The rent for July 2014 remains outstanding. The Landlord is entitled to retain the security deposit and pet damage deposit of \$780.00 and is granted a Monetary Order for the \$50.00 fee paid by the Landlord to file this Application.

The Landlord is given a formal Order in the above terms and the Tenant must be served with a copy of this Order as soon as possible. Should the Tenant fail to comply with this Order, the Order may be filed in the small claims division of the Provincial 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: February 18, 2015

Residential Tenancy Branch

