



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNDC, MNR, MNSD, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the parties confirmed the tenant vacated the rental unit on May 5, 2015. The landlord confirmed he no longer required an order of possession and that he only sought compensation for the unpaid rent for the month of April 2015; he stated he was not seeking any compensation for the 5 days of May 2015. I amended the landlord's Application to reflect these changes.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; to retain all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on December 31, 2014 for a 3 month and 1 day fixed term tenancy beginning on January 1, 2015 for a monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$525.00 paid. Both parties the section of the tenancy agreement that stipulates that the tenancy will end and the tenant must move out of the rental unit.

The parties agreed that the tenant did not pay the landlord any rent for the month of April 2015. They also agree that the tenant had attempted to pay the rent for April but the landlord refused to accept the payment. The tenant also testified that the landlord had called her assistance worker and advised that the tenant was not living in the rental unit.

The landlord confirmed that he refused to take the rent because at the time he had already received a rent payment for the month of April from his new tenant who had intended on moving in to the rental unit beginning in April 2015. However, he had to return the rent to the new tenant later when it became clear that his new tenant would not be able to move in because the tenant was still in the rental unit.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Based on the documentary evidence submitted by the landlord I am satisfied the parties entered into a tenancy agreement that required the tenant to vacate the rental unit on the date specified as the end of the tenancy.

As per the testimony of both parties, I find the tenant failed to vacate the rental unit until May 5, 2015 and as such I find the tenant overheld the property and the landlord is entitled to a per diem rate, based on the amount stipulated as rent in the tenancy agreement until she vacated the rental unit.

I accept that the landlord is willing to limit his claim to the amount of overholding to the month of April 2015. I also accept the landlord's undisputed testimony that he had refunded the rent he received from his new tenant and as such as suffered a loss resulting from the tenant's overholding.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,100.00** comprised of \$1,050.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$525.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$575.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 13, 2015

Residential Tenancy Branch

