



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing on Marcy 17, 2015, by registered mail to where the tenant resides. The documents were accepted for delivery the next day. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on May 1, 2012 and continue for a year. The lease was renewed each year with the latest renewal providing that the tenancy would end on April 30, 2015. The rent was \$2600 plus utilities per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1300 at the start of the tenancy. .

The tenant failed to pay the rent for January and February 2015. On January 26, 2015 the landlord served a 2 month Notice to End Tenancy on the tenant setting the end of tenancy for April 30, 2015. The tenant(s) vacated the rental unit in early March 2015.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. Policy Guideline #30 includes the following statement:

“A landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for reasons such as owner occupancy or purchaser occupancy, the landlord must serve a proper Notice to End Tenancy on the tenant. Proper notice in respect of purchaser occupancy includes the pre-requisites to issuance of the Notice to End: any conditions precedent removed from the sales agreement and the purchaser intends in good faith to occupy the rental unit and requests the vendor in writing to issue the Notice to End. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may **not**, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.”

I determined the landlord is entitled to the sum of \$5200 for non-payment of the rent for the month of January and February 2015. In addition the landlord is entitled to \$2600 for loss of rent for March. While the landlord gave a two month Notice to End Tenancy, the Policy Guidelines do not permit the tenant to end the tenancy early by giving a 10 day Notice. The landlord has not claimed and the tenant is not responsible for the rent for April.

- b. After viewing the photographs and oral testimony I determined the landlord has established a claim against the tenant in the sum of \$500 for the cost of cleaning.
- c. I determined the landlord is entitled to \$400 for the cost of cleaning.
- d. I determined the landlord is entitled to \$300 for the cost to repair the walls and closet door damage.
- e. I dismissed the claim for the cost to repair the bedroom carpet as that claim has not been proven. The landlord has not completed the work and the estimate of repairs in this case is insufficient.
- f. I determined the landlord is entitled to \$200 being a reasonable sum for junk removal.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$9200 plus the \$100 filing fee for a total of \$9300.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1300. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$8000.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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: August 24, 2015

Residential Tenancy Branch

