



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPL, MNR, MNSD, FF
Tenant: CNR, MNDC, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy 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. As a result, I find the landlord is no longer in need of an order of possession and the tenant no longer needs to dispute the 10 Day Notice to End Tenancy for Unpaid Rent. I amend the landlord's Application to exclude the matter of possession and I amend the tenant's Application to exclude the matter of canceling the 10 Day Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for the costs associated with pursuing her claim and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the cost of moving and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The parties submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 4, 2015 for a month to month tenancy beginning on June 1, 2015 for a monthly rent of \$400.00 due on the 1st of each month with a security deposit of \$200.00 paid;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 25, 2015 with an effective vacancy date of August 31, 2015 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 2, 2015 with an effective vacancy date of August 12, 2015 due to \$400.00 in unpaid rent.

Further the landlord clarified that she is no longer seek rent for August and September 2015 but hopes to retain the deposit for cleaning of the rental unit and for the costs associated with this hearing such as the filing fee; the cost of registered mail and the time taken off of work to attend.

The tenant submits that she original sought compensation for moving and storage costs in the amount of \$550.00 as she had received a moving estimate of \$250.00 and \$100.00 per month for storage. The tenant submits that since then she found a place to live and did not need to place things in storage but she still seeks the amount claimed because of the items she had purchased that she required in the dispute address. She states she had to buy a washing machine and a convection oven and she no longer requires these things.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

With the exception of a filing fee paid by one party to submit an Application for Dispute Resolution, the costs associated with preparing for a hearing are to be borne by the respective parties. There is nothing in the *Act* that allows an award for these costs and the costs do not represent any violation of the *Act*, regulation or tenancy agreement by the responding party. The filing fee is generally awarded to an applicant who was successful in their claim.

As such, I dismiss the landlord's claim for compensation for costs associated with preparing for this hearing. As she was unsuccessful in her claim I also dismiss her claim to recover the filing fee.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(5) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(6) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As the tenant did not dispute the Notice I find she accepted the Notice and vacated in accordance with it.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [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.

As the landlord did not pursue her claim for rent for the month of August 2015 and the tenant did not pay rent for the month of August 2015 I find the tenant has received her compensation pursuant to Section 51.

As such, I find the tenant has presented no evidence that the landlord has violated the *Act*, regulation or tenancy agreement. Further, as the tenant has received her allowed compensation, in the form of no rent payment for the month of August 2015, I find the tenant has not suffered any losses that result from any violation.

As a result, I dismiss the tenant's Application for Dispute Resolution.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

During the hearing I requested the tenant's address as she has moved since she filed her Application for Dispute Resolution but she preferred to call into the Residential Tenancy Branch to provide her address after the hearing. As such, I find the tenant has not yet provided her forwarding address to the landlord.

Section 39 of the *Act* states that if the tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit and the tenant's right to claim the deposit is extinguished.

As such, I find that even though I have dismissed the landlord's Application I cannot order the return of the security deposit because the tenant has not provided the landlord with her forwarding address in writing.

Conclusion

Based on the above, both the landlord's and the tenant's Applications for Dispute Resolution are dismissed in their entirety.

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: September 15, 2015

Residential Tenancy Branch

