



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, 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 August 10, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee - Section 72.

The Landlord applied on August 14 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. The Parties confirmed that the Tenant moved out of the unit and returned the keys. The Landlord confirmed that no order of possession is required. As the tenancy has ended I dismiss the Tenant's application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in either 2012 or 2013. The tenancy agreement prior to the current agreement was a fixed term agreement from May 2014 to May 31, 2015. At the end of this fixed term the Tenant was not required to move out of the unit. The current agreement was for

another fixed term from June 1, 2015 to August 31, 2015. Rent of \$1,100.00 was payable monthly. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit.

The Landlord states that at the end of the current fixed term the Tenant was to move out of the unit. The Landlord states that the Tenant only paid half the rent for August 2015 so the Landlord served the Tenant with a 10 day notice to end tenancy. The Landlord states that the Landlord refused to accept the return of the keys by the Tenant and that the keys were received by the Landlord in the mail on September 21 and the Landlord took possession of the unit on September 22, 2015. The Landlord claims unpaid rent.

The Landlord states that the Tenant did not move out of the unit on August 31, 2015 as was required by the tenancy agreement and that as a result the Landlord was not able to rent the unit for September 2015. The Landlord states that it becomes much more difficult to rent a unit after this date and that the Tenant caused this difficulty. The Landlord claims \$1,000.00 in compensation for not being able to rent the unit for September 1, 2015. The Landlord also claims \$600.00 for not being able to rent the unit from September 2015 forward at a higher rate.

The Landlord states that as the Tenant disputed the notice to end tenancy and there was uncertainty with the end of the tenancy the Landlord lost rental income for October and November 2015. The Landlord states that the unit was advertised for rent for October 1, 2015 at the rental rate of \$1,325.00. The Landlord states that the unit has still not been rented.

The Landlord states that as a result of the dispute the Landlord lost work and experienced both distress and inconvenience. The Landlord claims \$1,000.00 as compensation.

The Tenant states that although the Landlord hounded her for days about signing a three month term agreement, she did not agree to enter into a three month tenancy and did not sign any agreement as indicated by the copy provided by the Landlord. The Tenant states that she was led to believe by the Landlord that she would have another year term offered to her and that she would not have to move out of the unit before May 2016.

The Tenant agrees that she only paid half the rent for August 2015 and states that she wanted the Landlord to serve her with an eviction notice so that she could dispute the Landlord's

demand for a three month term tenancy. The Tenant states that she moved out the unit because she was unable to get a roommate due to the dispute with the Landlord. The Tenant states that she did not pay any rent for September 2015 and that she could not return the keys until September 17, 2015 as she had to clean and paint the unit.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Rent is payable until a tenancy ends. Although the Parties dispute the term of the tenancy, there is no dispute that the rent payable is \$1,100.00 per month due on the first of each month. There is also no dispute that the Tenant did try to return the keys until September 18, 2015. As such I find that rent remained payable under a continuing tenancy until the Tenant returned the keys on September 18, 2015. This amounts to **\$550.00** for August 2015 rent and **\$609.84** (based on a per diem of \$36.66 x 18 days) in unpaid rent for the period September 1 to 18, 2015 inclusive.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. Although the Landlord argues that the Tenant did not comply with the end term of the tenancy agreement, even if the Tenant were required to move out earlier than done, the Landlord is still required to make a reasonable effort to mitigate any losses. By advertising the unit for well above the Tenant's rental rate, I find that the Landlord failed to take any reasonable steps to mitigate all the remaining compensation being claimed for September and October 2015 and I dismiss these claims. As the matter of rent for November 2015 is a future event yet to be determined, I dismiss this claim.

There is nothing in the Act that provides compensation to a landlord for carrying out its duties and obligations. I therefore dismiss the Landlord's claim to be compensated for its time taken to deal with the Tenant's dispute of the notice to end tenancy issued by the Landlord.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,209.84**. Deducting the security

deposit of **\$550.00** plus zero interest from this entitlement leaves **\$659.84**.

Conclusion

I Order the Landlord to retain security deposit plus interest of \$550.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$659.84**. 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: October 19, 2015

Residential Tenancy Branch

