



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 July 2, 2015 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 21, 2015 for:

1. A Monetary Order for unpaid rent or utilities - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Tenant’s claim for compensation in relation to a prior tenancy been made within the time limit?

Did the Landlord end the tenancy in bad faith?

Do the Tenants owe rent to the Landlord?

Are the Tenants entitled to recover evidence costs?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are undisputed facts: The tenancy of the disputed rental unit (the "West 18th" unit) started around July 2011. Rent of \$2,300.00 was payable monthly on the 15th of each month. Prior to this tenancy and from about 2007 the Tenants rented a different unit (the "West 40th" unit) from the same Landlord and paid \$800.00 for a security deposit at this unit. This amount was transferred to the tenancy that started at West 18th unit. No move-in inspection was offered by the Landlord.

The Landlord states that the tenancy ended on May 15, 2015 and that the Tenants informed the Landlord by email at the end of April 2015 that they were moving out of the unit on May 1, 2015. The Landlord states that he received the keys that were pushed through his door when he returned from out of country on May 7, 2015. The Landlord states that he received the Tenants' forwarding address by email at the middle or end of May 2015. The Landlord states that he does not think the Tenants paid the rent on April 15, 2015 and claims \$1,150.00. The Landlord states that the Tenants owe rent of \$2,300.00 from 2014 and claims this amount.

The Tenant states that the keys were returned to the Landlord on May 1, 2015. The Tenant states that they provided their forwarding address to the Landlord at the end of the tenancy. The Tenant states that they did pay the rent on April 15, 2015. The Tenant agrees that they owe unpaid rental arrears of **\$2,300.00** from 2014.

The Tenants submit that the tenancy at West 40th was ended in July 2011 by the Landlord as the Landlord wanted to develop the property. The Tenant submits that this development was never done and the Tenant claims \$29,900.00 as compensation for losses in having to move into the West 18th unit and pay higher rent.

The Tenant state that in January 2015 the Parties started to discuss renting the West 40th unit as it was to become available. The Tenant states that an oral agreement was made for the Tenants to move into the West 40th unit on June 1, 2015. The Tenant states that the tenant of the West 40th unit showed the Tenants the interior of the unit

near the end of April 2015. The Tenant states that the unit was found to be unliveable so the Tenant told the Landlord that they would not move into the unit and wished to stay in the West 18th unit. The Tenant states that the Landlord told them that they would have to move out as they Landlord was going to develop the West 18th unit.

The Tenant states that they soon found another rental unit for the right rate and in the desired school area and that since these rentals are not often available the Tenant had to take this rental immediately. The Tenant states that the Landlord advertised the West 18th unit sometime in May 2015 for an extra \$500.00 per month and never did develop the unit. The Tenant states that the Landlord never gave them any notice to end the tenancy just orally told them to move out. The Tenants claim the equivalent of twice the rent payable or \$4,600.00. The Tenants also claim moving costs of \$350.00.

The Landlord states that there was an oral and mutual agreement to end the tenancy at West 18th for a number of reasons and that the Tenants were expected to move out of the unit based on this oral agreement. The Landlord states that the unit was advertised in May 2015 but that the unit could not be shown or rented until June 2015 as the Tenants had left a piano in the unit and repairs to the unit were needed before the unit could be shown to prospective tenants.

The Tenant claims costs of printing and photocopying of evidence documents.

Analysis

Section 60 of the Act provides that an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. Further, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes. Given that the Tenants' claim for damages in relation to the Landlord's stated intentions for ending the tenancy at West 40th has been made later than 2 years from the end of that tenancy, I find that no claim exists from this tenancy and I dismiss this part of the Tenants' application.

Section 44 of the Act provides that a tenancy ends only when, inter alia, one of the parties gives notice to end the tenancy or there is a mutual agreement to end the tenancy. Where a landlord gives a notice to end the tenancy it must be in the approved form. Section 49 of the Act provides that a tenant is entitled to compensation if the landlord ends the tenancy for landlord's use and subsequently the rental unit is not used for the stated purpose as provided on a notice to end tenancy.

While I consider that there was originally an oral mutual agreement to end the tenancy for June 1, 2015 given the Landlord's actions in failing to provide a habitable unit for the Tenants to move into I find that this agreement was ended by the actions of the Landlord. However although the Landlord insisted that the Tenants still move out of the unit, no notice to end tenancy was given to the Tenants by the Landlord. I accept that the Tenants moved out of the unit at their own choice and on their own time. I find therefore that the Tenants are not entitled to compensation in relation to the Landlord's use of the unit after the end of the tenancy at West 18th and I dismiss their claim for double the monthly rent and moving costs.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. As the Landlord is not sure about whether the rent he is claiming has been paid, I prefer the Tenants' evidence that rent was paid on April 15, 2015 as required under the tenancy agreement for the period April 15 to May 15, 2015. I therefore dismiss that claim for unpaid rent. Based on the agreement of the Tenants I find that the Landlord has substantiated unpaid rent of **\$2,300.00** from 2014.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Even if the tenancy ended on May 15, 2015 or if the forwarding address was not

received until May 30, 2015 as stated by the Landlord, as the Landlord failed to make its application to claim against the security deposit within 15 days from the later of the two dates, I find that the Landlord is required to pay the Tenants double the security deposit plus interest of \$24.28 for a total amount of **\$1,624.28**.

As both Parties were only partially successful with their claims, I decline to award either Party recovery of their filing fees. As the Act does not provide for compensation in relation to costs of the dispute proceedings other than the filing fee I dismiss the Tenants' claims for evidence costs.

Deducting the Tenants' entitlement from the Landlord's entitlement leaves **\$675.72** owed by the Tenants to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$675.72**. 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: December 18, 2015

Residential Tenancy Branch

