



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

O, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for “other” and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the information on the Application for Dispute Resolution that the Tenant is seeking a partial rent refund from November of 2015.

The Tenant stated that on December 11, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on December 15, 2015 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to a rent refund?

Background and Evidence:

The Landlord and the Tenant agreed that they entered into a fixed term tenancy agreement, the fixed term of which began on August 28, 2015 and ended on February 29, 2016 and that the Tenant agreed to pay rent of \$2,300.00 by the first day of each month.

The Tenant stated that on October 07, 2015 she sent an email to the Landlord in which she indicated she would like to end the tenancy prior to the end of the fixed term and she asked if the Landlord would advertise the rental unit for November 01, 2015.

The Landlord and the Tenant agreed that the parties subsequently agreed that the Tenant would vacate the rental unit on November 01, 2015; that she would pay rent for November of 2015; and that she would continue to pay rent until the end of the fixed term of the tenancy or until the Landlord was able to re-rent the unit.

The Landlord and the Tenant agree that the Tenant stopped living in the rental unit on October 31, 2015; that she had fully cleaned the rental unit by November 01, 2015; that she removed her property from the storage locker on November 05, 2015; and that she paid rent for November of 2015.

The Landlord stated that he was able to find a new tenant; that the new tenant began moving property into the rental unit; that the new tenancy officially began on November 15, 2015; and that the new tenant paid \$2,300.00 in rent for November, even though the new tenant did not occupy the unit for the full month.

The Tenant stated that she went to the rental unit on November 06, 2015 and observed property belonging to the new tenant on the residential property. She is seeking to recover a portion of the rent she paid for November on the basis that the Landlord received rent from a third party for November. The Tenant's claim for a partial rent refund was based on her speculation that the new tenant had not paid rent for the full month of November.

The Witness for the Tenant, who is the Tenant's sister, stated that when she went to the rental unit on November 09, 2015 she concluded that someone was living in the rental unit because she heard a dog inside and saw lights on inside the unit.

Analysis:

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

There is no evidence that the Landlord gave notice to end this tenancy.

Although the Tenant did inform the Landlord, via email, that she wished to end the tenancy on November 01, 2015, the email does not constitute proper written notice in accordance with section 45 of the *Act*, as the notice attempted to end the tenancy prior to end of the fixed term of the tenancy. As neither party gave proper notice to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if 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. As the Tenant vacated the unit prior to the end of the fixed term of the tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant

agree in writing to end the tenancy. As there is no evidence that the parties agreed, in writing, to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended, pursuant to section 44(1)(d) of the *Act*, when the Tenant fully vacated the rental unit. I find that the tenancy ended on November 05, 2015 when she removed all of her property from the storage area of the unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

Section 26 of the *Act* requires tenants to pay rent when it is due. On the basis of the undisputed evidence I find that rent of \$2,300.00 was due by the first day of each month. As the rental unit was not fully vacated until November 05, 2015, I find that the Tenant was obligated to pay the rent that was due on November 01, 2015 and that she did pay the rent that was due for November.

Once rent has been paid a landlord is entitled to retain the rent even if a tenant opts to vacate the rental unit prior to the end of the month. A landlord is entitled to retain rent even if a landlord is able to re-rent the unit after the rental unit has been vacated. I therefore dismiss the Tenant's application to recover any of the rent she paid for November of 2015.

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss her claim to recover the fee paid to file this Application.

Conclusion:

The Tenant's Application for Dispute Resolution is dismissed.

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: March 10, 2016

