



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order to retain a security deposit.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

At the outset of the hearing I clarified with the landlord's agent that the landlord's intention is to claim \$700.00 and apply the security deposit of \$350.00 to that debt. Based on the Details of Dispute section of their Application I am satisfied the landlord's Application provides sufficient information for the tenant to respond fully and adequately.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain the security deposit for unpaid rent, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed that the tenancy began in October 2012 as a month to month tenancy for the monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The landlord submitted that the tenant provided, on October 1, 2015, that she intended to vacate the rental unit. The tenancy ended on October 11, 2015 when the tenant vacated the rental unit. The landlord submitted the tenant did not pay any rent for the month of October 2015 and provided her forwarding address by November 2, 2015.

The tenant submitted that in September 2016 she found out that local authorities had determined the rental unit was an "illegal suite". She stated that the landlord had told her that they would have to remove the oven and maybe some cupboards.

The tenant also submitted that she spoke with the city inspector who indicated to her that the landlord had been given until October 1, 2015 to rectify the circumstances. The tenant stated that as a result she felt that she needed to vacate the rental unit immediately.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. In such a case the landlord must issue the tenant a 1 Month Notice to End Tenancy for Cause.

While no such Notice was issued in this case I put this information in this decision to illustrate that if the local authorities had issued the landlord an order to change the unit and it required the tenancy to end the landlord would have to end the tenancy pursuant to Section 47. This process would have given the tenant at least 1 full calendar month to find new suitable accommodation.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

A landlord's obligation under Section 32 to provide a rental unit that is in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant could be considered a material term of the tenancy.

However, in the case before me the tenant did not provide any evidence or testimony that she provided the landlord with a notice of a breach of a material term or gave them any time to correct the breach. As such, I find the tenant was obligated under Section 45(1) to end the tenancy by providing the landlord with a 1 month notice of her intent to do so.

Based on the landlord's undisputed submission that the tenant provided her notice of her intention to end the tenancy on October 1, 2015, I find the earliest tenancy should have ended would have been on November 30 2015.

As such, I find the tenant was obligated to pay rent for the month of October 2015. While I would also normally consider, based on the above, that the tenant should be held responsible for rent for November 2015 I note that the landlord, by his own testimony, as not yet readied the rental unit to be a legal suite pursuant to local bylaws. As such, I find only that the tenant owes the landlord \$700.00 for the month of October 2015.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$700.00** comprised of \$700.00 October 2015 rent owed.

I order the landlord may deduct the security deposit and interest held in the amount of \$350.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$350.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 07, 2016

Residential Tenancy Branch