



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1210 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant testified she sent documents to the landlord by registered mail on July 21, 2016. The landlord testified he had not received them. I have not been provided with copies of those documents. I determined they had not been provided within the time periods set out in the Rules of Procedure.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on March 17, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement for the rental of another rental unit in the rental property commencing January 1, 2015. They subsequently entered into a new one year

fixed term tenancy agreement for this rental unit commencing August 1, 2015 and ending July 31, 2016 and becoming month to month after that. The tenancy agreement provided that the rent was \$780 per month payable in advance on the first day of the month.

The tenant testified around the middle of February a friend who was in the rental unit witnessed a person on her balcony. Two days later she also saw a person. The tenant testified that she moved out of the rental unit because the landlord failed to properly respond to her concerns about a person on her balcony. She testified she decided to move into the basement suite of the family of a friend on February 14, 2016. She did not advise the landlord of her decision. The landlord became aware she was leaving when they saw her moving belongings out on February 21, 2016. The parties conducted a Condition Inspection at the end of February.

The landlord was not able to re-rent the rental unit for March and lost rent for that month as a result. He testified he was also not able to rent the rental unit for April. However, the Application for Dispute Resolution claimed loss of rent for March and he did not claim for loss of rent for April.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. Where a tenant has entered into a fixed term tenancy agreement the tenant is responsible to pay the rent for the fixed term subject to the following:
 - the landlord's obligation to mitigate and
 - whether the tenant has grounds to end the tenancy under section 45(3) which provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

I infer from the tenant's testimony that she submits she had the right to end the tenancy early because the landlord failed to sufficiently respond to the presence of the prowler on her balcony. However, the tenant has not complied with section 45(3) as required by the Act.. She failed to provided the landlord with written notice alleging the breach of a material term and failed to give the landlord a reasonable opportunity to rectify the breach. Further, in my view the tenant failed to prove the landlord breached a material term of the tenancy agreement. She testified she was not happy with how the landlord dealt with her concern about the prowler on her balcony. Initially the individual could not be identified. Later, the individual was identified as a person who was no longer a tenant in the rental unit. It was subsequently discovered that he is staying with his grandmother who lives on the 3rd floor. The option opened to the landlord was to serve a one month Notice to End Tenancy on the grandmother. The end of tenancy date would have been the end of March. However, the tenant had made the decision to move in the middle of February and vacated on February 21, 2016.

I determined the landlord sufficiently attempted to mitigate their loss. However, the tenant failed to provide the landlord with written notice when she first decided to move it is possible the landlord could have found another tenant. The tenant argued that she thought she was signing an extension to the previous tenancy and therefore it was a month to month tenancy. The result is the same. The law requires the tenant to give a clear month notice on or before the end of the rental payment period to be effective at the end of the ensuing rental payment period. Thus, had this been a month to month tenancy and had the tenant given written notice at the end of February it would not be effective until the end of March 2016.

- b. I dismissed the landlord's claim for the cost of repainting a wall the tenant had painted as an accent wall for the following reasons:
- The landlord has not re-painted the rental unit or the accent wall. It is reasonable to infer the new tenant is satisfied with the wall in its present color as there is no evidence to the contrary. I am not satisfied the landlord would re-paint the accent wall if a monetary award was granted..
 - The evidence relied on by the landlord is not satisfactory as it relates to the re-painting of the entire suite (not just the accent wall) of a much larger rental unit.

As a result I dismissed the claim for the labour cost of painting in the sum of \$375 and the cost of paint the sum of \$165. This claim has not been proven.

- c. I dismissed the claim for the cost of registered mail. This refers to the cost of litigation. The only jurisdiction an Arbitrator has relating to costs is the cost of the filing fee.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$780 plus \$100 filing fee for a total of \$880.

Security Deposit

I determined the security deposit plus interest totals the sum of \$430. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$450.

Conclusion

In summary I determined the landlord has established a monetary order against the tenant(s) in the sum of \$880. I ordered the landlord may retain the security deposit/pet deposit in the sum of \$430. In addition I ordered that the Tenant pay to the Landlord the sum of \$450.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The tenant testified she has filed an Application for Dispute Resolution. The matter is set for hearing in late September. The landlord has not been served. I have not dealt with that Application in this matter.

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: July 27, 2016

Residential Tenancy Branch

