



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

On April 29, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord provided documentary evidence of a previous dispute resolution hearing involving both parties that was heard on January 18, 2016. A decision was issued on January 18, 2016, granting the Landlord an order of possession for May 31, 2016. The Decision also states that the Tenant will use her best efforts to vacate the unit sooner and if so will give the Landlord 30 days written notice as required by the Act.

Issues to be Decided

Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement?

Is the Landlord entitled to keep the Security Deposit?

Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on June 1 2009. Rent in the amount of \$1,150.00 was payable on the first of each month. The Tenant paid the Landlord a \$575.00 security deposit.

The Landlord testified that the Tenant did not provide her with proper written notice to end the tenancy and did not provide enough time before she moved out. The Landlord testified that due to the improper notice to end the tenancy, she suffered a loss of rent for the month of May 2016. The Landlord provided documentary evidence of an email sent by the Tenant to the Landlord on April 20, 2016. The email states that the Tenant found a place yesterday and will be moving asap and will return the keys on April 30.

The Landlord testified that her agent listed the rental unit right away but it was not re-rented until June 2016.

The Landlord testified that the Tenant did not comply with the Arbitrator's order from the previous hearing.

The Landlord also testified that after the Tenant moved out she discovered damage caused by the shower. She states that water leaking from the shower caused floor damage and ceiling damage. She testified that she spent approximately \$600.00 to fix the plumbing.

The Landlord did not provide any documentary evidence of receipts or photographs, or break down the claim for the bathroom repair.

In response, the Tenant acknowledged sending the April 20, 2016, email to the Landlord. She submits that all the correspondence with the Landlord was conducted by email. The Tenant states that the Landlord could have rented the property out for May 2016, easily as there were many people looking to rent.

The Tenant testified that the house is over 50 years old and that there are many issues due to water leaks and ongoing repairs to the water main. She submits that an inspection of the unit and shower prior to the Landlord purchasing the house identified that the shower faucet was dripping. The Tenant testified the Landlord was aware of the potential problem with the shower.

The Tenant testified that she did not cause any of the water damage and she was not aware that the plumbing behind the shower was leaking and causing damage.

Section 45 of the *Act* states that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. A notice to end a tenancy given under this section must comply with section 52 of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not end the tenancy in accordance with the *Act*. The Tenant's Notice to end tenancy does not comply with the provisions in section 45 or 52 of the *Act*.

I find that the Tenant moved out on April 30, 2016, and the Landlord was unable to rent the unit for the month of May 2016. I find that the Tenant owes the Landlord \$1,150.00 for rent for May 2016.

The burden of proof rests with the person making the claim. The Landlord has not provided any evidence to support her claim that the Tenant caused water damage to the rental unit by neglect. There is no documentary evidence, or photographs, or a breakdown of the cost of the repairs. The Landlord has provided insufficient evidence to support her claim. The Landlord's claim for damage is dismissed.

The Landlord is entitled to the amount of \$1,150.00 for May 2016, rent.

I order that the Landlord can keep the security deposit in the amount of \$575.00 in partial satisfaction of her claim for May 2016 rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,250.00 comprised of \$1,150.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. After offsetting the security deposit towards the claim of \$1,250.00, I find that the Landlord is entitled to a monetary order in the amount of \$675.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant did not give the Landlord proper Notice to end the Tenancy. The Tenant owes the Landlord for May 2016 rent. The Landlord can keep the security deposit and is granted a monetary order in the amount of \$675.00 for May 2016 rent.

The Landlords claim for damage 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: July 25, 2016

Residential Tenancy Branch