



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, 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 January 5, 2016 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on January 15, 2016 for:

1. An Order for unpaid rent or utilities - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matter

It was noted that the Landlord and the tenancy agreement sets out a Tenant's last name that is different from the name provided by that Tenant in its application. This Tenant confirmed that her legal name is as stated in its application. With the Landlord's agreement I amend this Tenant's name on the Landlord's application to set out this Tenant's legal name.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Tenant entitled to return of the security deposit?

Are the Parties entitled to their respective filing fees?

Background and Evidence

The tenancy of a basement unit over which the Landlords reside started on December 1, 2014. Rent of \$1,050.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Tenants moved out of the unit on January 1, 2016.

The Landlord states that on December 22, 2015 the Tenants gave notice in writing to end the tenancy for January 1, 2016. The Landlord states that on December 26, 2015 the Landlord advertised the unit online for \$1,100.00 and that a suitable tenant was found to start a tenancy on February 1, 2016. The Landlord argues that as the Tenants failed to provide a full month notice to end the tenancy they remain obligated to pay for January 2016 rent. The Landlord claims \$1,050.00.

The Tenant states that in early November 2015 rats were heard inside the walls of the unit and were immediately reported to the Landlord. The Tenants state that the Landlord periodically attended the unit to close holes and put out bait traps but refused to call a pest control company. The Tenant states that the rats continued to be heard in the walls causing great distress and that on or about December 21, 2015 a rat ran over the face of one of the sleeping Tenants. The Tenant states that the Landlord refused to carry out or allow the Tenants to take any measures that would result in harm to the rats. The Tenant states that the Landlord refused to allow the Tenants to bring a cat to the unit. The Tenant states that the Landlord refused to call a pest control company due to the cost.

The Tenant states that one of the Landlords would throw bits of meat and seeds on the ground to feed the birds, that the Landlord kept bird feeders on the railing of their deck and that bird feed was left on the deck. The Tenant states that they followed up their letter of December 22, 2015 with an email indicating that if the rats were gone the tenancy would continue. The Tenant states that the Landlords took no additional actions prior to the Tenants moving out of the unit. The Tenants submit, inter alia, copies of emails, the letter dated December 22, 2016 and documents indicating that the presence of rats is a health hazard.

The Landlord states that it is well known that rats are in the area, will always be found in the area, and that it takes a long time to get rid of them. The Landlord states that the actions taken by the Landlord were as good as any actions that would be taken by a pest control company. The Landlord states that she knows this as she talked to a pest control company. The Landlord states that her father worked on the rat problem along with the Landlords and that the father has 20 years' experience as a home owner. The Landlord states that none of them have any specific background or work experience in pest control.

The Landlord agrees that the requirement to maintain the health standards of a rental unit is a material term of a tenancy agreement. The Landlord argues that the existence of rats is not a breach of material term of the tenancy agreement given their known existence in the area. The Landlord does not consider the Tenant's letter of December

22, 2015 to be any notice of a breach of a material term and that the Tenant's evidence of the unit being unliveable and putting their health and safety at risk is a gross overstatement of the living conditions of the unit.

The Landlord states that the Tenants must understand that it takes time to get rid of rats as a house can have multiple entry points. The Landlord states that the Tenants only told the Landlord about the rats near the end of November 2015. The Landlord agrees that the incident involving the rat on the face would be "very traumatic" but that this rat was caught shortly thereafter and set free in the back alley. The Landlord states that the other Landlord would never throw raw meat on the yard and is not aware of him throwing any bird seed. The Landlord agrees that they have bird feeders and that bird feed does fall on the deck.

Analysis

Section 45(3) of the Act provides that if a 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. It is undisputed that rats were in the unit, whether inside the walls or crawling over a face. The Landlord agrees that the obligation of the Landlord to maintain health standards is a material term. I accept the Tenant's supported evidence that the presence of rats is a health hazard and therefore a breach of a material term. Despite the Landlord's denial, I accept the Tenant's persuasive and therefore preferable evidence that one of the Landlords throws seeds and bits of meat in the yard. I consider this fact and the presence of bird feeders on the railing to be evidence of, at a minimum, the Landlord's reckless contribution to the continuing presence of rats given the Landlord's evidence of having knowledge that rats are a problem in the area.

Given the undisputed evidence of the letter dated December 22, 2016 in which the Tenants indicate the significance of the rat problem and the follow-up email in which the Tenants indicate that the tenancy would not end if the rats are removed I find that the Tenants gave the Landlord written notice of a breach of a material term. As the Tenants lived with the rats I prefer the Tenant's evidence of when they were first reported to the Landlord. Based on the undisputed evidence that the Landlord failed to take any additional steps to eradicate the rats such as hiring a pest control company, considering the Landlord's contribution to the problem, the lack of any evidence that the Landlord has technical or special knowledge of pest control, I find that the Landlord did not act sufficiently to begin with and following receipt of the December 22, 2015 letter, by doing nothing more, the Landlord failed to take any reasonable steps to remedy the problem.

I find therefore that the Tenants were entitled to move out of the unit as done and that the tenancy ended when the Tenants moved out of the unit.

As the Tenants were not out of compliance with the Act in ending the tenancy I find that the Landlord has not substantiated its claim to rent of \$1,050.00 for January 2016 and I dismiss this claim. The Landlord must therefore return the security deposit of \$500.00 plus zero interest to the Tenant forthwith. As the Landlord's claims have not been successful I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

As the Tenant's application has been successful I find that the Tenants are entitled to recovery of their filing fee for a total entitlement of \$550.00.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$550.00**. 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: August 12, 2016

Residential Tenancy Branch