



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

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

- a. A monetary order in the sum of \$850 for unpaid rent and the failure to carpet clean.
- b. An order to retain 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 agent for the Tenant acknowledged he had received the landlord's documents. However, the agent for the Tenant failed to serve the Tenant's documents on the landlord. I determined it was proper to proceed with the hearing in any event.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to the tenant's forwarding address on April 7, 2016.

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 one year fixed term written tenancy agreement that provided that the tenancy would start on October 1, 2015, end on September 30, 2016 and become month to month after that. The rent is \$800 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$400 on September 29, 2016.

On January 3, 2016 the tenant sent a text message to the landlord stating that his significant other wishes to move into a bigger place closer to transit and they are looking around. It states "We don't plan to be leaving until sometime probably until near the end of February...Is that alright?"

The landlord acknowledged receipt of the text and that it appeared the tenants wanted to move out on March 1, 2016.

The landlord produced a letter from the Tenant dated February 3, 2016 that "According to the terms of my lease requiring a 30 day notice, you are hereby advised on my intent to vacate the premises on or before March 15, 2016." The "1" of "15" is handwritten.

The parties testified the Craigslist advertisement was that the rental unit was available for March 15, 2016. Neither party produced a copy of the advertisement.

On February 6, 2016 the landlord texted the tenant requesting that he be permitted to show the rental unit. The tenant agreed.

There is an undated text message where the landlord advises the tenant has someone moving in on the 15th (of March) and stating the moving early does not negate rental responsibilities.

The tenant vacated the rental unit at the end of February. He infant child was born on March 12, 2016.

The tenant provided the landlord with his forwarding address in writing by e-mail on March 21, 2016.

Analysis:

Further I determined that the text message of early January was not sufficient to end the tenancy for the end of February in the absence of the agreement from the landlord for

the following reason:

- A one month notice is not sufficient to relieve a tenant from the obligations to pay the rent for the unexpired portion of the fixed term unless the parties agree to the contrary and subject to the landlord's obligation to mitigate.. .
- The text message of early January was not sufficient to end the tenancy on February 29, 2016. Section 52 of the Residential Tenancy Act provides as follows:

Form and content of notice to end tenancy

52 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

- Further, the written notice give on February 3, 2016 was not effective to end the tenancy on March 1, 2016 for the following reasons:
 - It purports to end the tenancy on March 15, 2016. The agent for the landlord testified the landlord must have altered the notice. However, his son did not testify. I accept the testimony of the landlord that he did not alter the document and the Notice purported to end the tenancy on March 15, 2016.
 - Further, the Notice is not valid as it was not signed by the Tenant
 - A one month Notice to End Tenancy given by a Tenant is not effective to end a fixed term tenancy where there is an unexpired term unless it is agreed upon by the landlord.
 - Even, if this had been a month to month tenancy, the Notice of February 3, 2016 is not effective to end the tenancy on February 29, 2016 because the Act requires a clear month notice given on or before the end of the rental payment period to be effective at the end of the ensuing rental payment period.

I do not accept the submission of the agent for the tenant that the fixed term tenancy agreement is not binding on his son because his son is less than 19 years of age. Section 3 of the Act provides as follows:

“Act applies to tenancy agreement with a minor

3 A person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.”

I do not accept the submission of the agent for the tenant that the landlord failed to mitigate his loss because he failed to attempt to rent the rental unit starting March 1, 2016. Where the tenant has failed to give a valid notice, the obligation of the landlord to take reasonable steps to mitigate his loss starts on the date the tenant vacates the rental unit. Policy Guideline #5 includes the following:

“...The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy; however, claims for loss of rent for subsequent months may be successful once efforts to find a new tenant are made.”

In this case I determined the landlord acted reasonably to lessen his loss. He advertised the rental unit in early February based on the Notice given by the tenant dated February 3, 2015 that he would be out no later than March 15, 2016 and he was able to find a new tenant to move in on that date.

Analysis - Monetary Order and Cost of Filing fee:

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

- a. For the reasons set out above I determined the landlord is entitled to \$400 for loss of rent for the period March 1, 2016 to March 15, 2016.
- b. I determined landlord has established a claim in the sum of \$50 for the cost of carpet cleaning.

In summary I determined the landlord has established a claim against the tenant in the sum of \$450 plus the sum of \$100 in respect of the filing fee for a total of \$550.

Security Deposit:

I determined the security deposit totals the sum of \$400. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$150.

Conclusion:

In conclusion I ordered that the landlord shall retain the security deposit of \$400. I further ordered that the Tenant pay to the Landlord the sum of \$150.

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.

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 24, 2016

Residential Tenancy Branch