



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF; MNDC, MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and tenant attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

The landlord clarified that she is not seeking a monetary order for unpaid rent but rather a monetary order to recover a loss of rental income. Therefore I dismiss this portion of the landlord's claim.

Issue(s) to be Decided

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? If not, is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 15, 2015 on a fixed term until October 14, 2016. The tenant remitted a security deposit in the amount of \$700.00 at the start of the tenancy. Rent in the amount of \$1,400.00 was payable on the first of each month.

In early April of 2016 the landlord received notification that the Interior Health Authority received a complaint about a septic issue on the residential property. The Interior Health Authority conducted an inspection on April 12, 2016. The landlord provided evidence that the system was upgraded by an authorized person in May of 2016.

The tenant provided written notice to the landlord on April 24, 2016 that she would vacate the rental unit by May 15, 2016. The tenant's written letter outlines what she considers unresolved deficiencies within the rental unit.

Despite the tenant's written notice to vacate May 15, 2016 she vacated the rental unit on May 1, 2016. Upon receipt of the tenant's notification to vacate, the landlord advertised the rental unit and secured a new tenancy effective June 1, 2016.

The parties agreed that move-in and move-out condition inspections were conducted. The tenant testified that she gave her forwarding address to the landlord on the application for dispute resolution form.

Landlord Claims

The landlord seeks to recover the cost of May rent in the amount of \$1,400.00 and the advertising fees she incurred in the amount of \$136.00.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Tenant Claims

The tenant seeks the return of her security deposit in the amount of \$700.00 and compensation in the amount of \$1,400.00 for a leaking roof and plumbing issues.

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord.

In reply to the landlord's claim for May rent, the tenant testified that she understood that because the landlord did not provide a copy of the tenancy agreement within 21 days, the fixed term reverts to a month to month tenancy thereby removing any obligation to pay May rent.

Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on October 14, 2016. Although the tenant provided written notice of her intent to end the tenancy on May 15, 2016, she attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Under section 13 of the *Act* a landlord must provide a tenant with a copy of the tenancy agreement within 21 days, however the *Act* does not establish that the landlord's failure to do this voids a fixed term tenancy. The parties confirmed that the tenant received a copy of the tenancy agreement.

Pursuant to the *Residential Tenancy Policy Guideline, 30: Fixed Term Tenancies* ("Guideline 30"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. The parties in this case did not mutually agree to end the fixed term tenancy. Instead the tenant indirectly alleged cause by listing the deficiencies in her letter to vacate dated April 24, 2016. A tenant ending a fixed term tenancy for cause is required to provide proper written notice of breach of a material term to the landlord. I find this letter does not constitute proper notice of a breach of a material term of the tenancy agreement and therefore find the tenant did not end this tenancy in accordance with the *Act*.

Landlord Claims

Pursuant to the *Residential Tenancy Policy Guideline, 5: Duty to Minimize Loss* ("Guideline 5"), when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the landlord's evidence and testimony I find the landlord mitigated her loss by advertising the unit promptly and securing a tenancy for June 1, 2016. Therefore I find that the landlord is entitled to \$1,400.00 for May rent.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually

exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In regards to the landlords claim for advertising fees, I find the landlord has failed to substantiate this loss with submitted receipts. For this reason I dismiss this portion of the landlord's claim.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a **total award of \$1,450.00**.

Tenant Claims

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

A forwarding address only provided by a tenant on the application of dispute resolution form does not meet the requirement of separate written notice under the *Act*. On this basis, I dismiss this portion of the tenant's claim.

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the *Residential Tenancy Policy Guideline, 6: Right to Quiet Enjoyment (Guideline 6)* a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the same test prescribed by Section 7 of the *Act* described above in the analysis of the landlord's claim.

I find the tenant has failed to satisfy the burden of proof. The tenant has provided insufficient evidence to establish the landlord was aware of issues and failed to take reasonable steps to resolve them. Contrary to this, the landlord provided evidence in the form of emails, work orders, invoices and witness statements that show upon report of an issue, the landlord tended to it in a timely fashion. For these reasons I dismiss this portion of the tenant's claim.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$700.00 in partial satisfaction of the \$1,450.00 monetary award and I grant an order for the balance due **\$750.00**.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$750.00**.

The tenant's entire application is dismissed without leave to reapply.

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: October 20, 2016

Residential Tenancy Branch