Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNR, MNSD, MNDC, FF

Introduction

On May 4, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; to keep the security deposit; for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and the Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during 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.

Issues to be Decided

Is the Landlord entitled to a monetary order to recover unpaid rent?
Is the Landlord entitled to liquidated damages?
Is the Landlord entitled to keep the security deposit towards unpaid rent?
Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the parties entered into a tenancy agreement on April 1, 2016. The parties testified that the tenancy was to begin on May 1, 2016, as a one year fixed term tenancy to continue thereafter a month to month tenancy. Rent in

the amount of $900.00 was payable on the first of each month. The Tenant paid the Landlord a security deposit of $450.00, and a pet deposit of $450.00.

The Landlord testified that the Tenant broke the fixed term tenancy agreement by failing to move into the rental unit on May 1, 2016.

The Landlord testified that on April 20, 2016, the Tenant sent her an email stating that because of concerns about mold in the rental unit the Tenant did want to move in to the rental unit.

The Landlord testified that she explained to the Tenant that there was no mold in the rental unit. The Landlord testified that to alleviate the Tenant's concerns about mold, the Landlord hired a company to test for mold. The Landlord testified that she emailed the Tenant on April 28, 2016, and informed her that the mold analysis was complete and that there is no mold. The Landlord testified that there was no problem stopping the Tenant from moving into the rental unit on May 1, 2016, and she tried to arrange a move in inspection.

The Landlord testified that the Tenant refused to move into the rental unit and the Landlord informed her that the Landlord would be seeking compensation.

The Landlord testified that she suffered a loss of rent for the month of May 2016, and for half the month of June 2016. The Landlord testified that she advertised the rental unit and was able to rent the unit to a new Tenant starting June 15, 2016.

The Landlord testified that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay $500.00 as liquidated damages for the Landlords costs of re-renting the rental unit, if the Tenant ends the fixed term tenancy early. The Landlord provided a copy of the tenancy agreement.

The Landlord makes a total monetary claim in the amount of $1,850.00 as follows:

- Liquidated damages in the amount of $500.00
- Rent for May 2016, in the amount of $900.00
- Rent for June 2016, in the amount of $450.00

The Landlord asks to keep the security deposit in the amount of $450.00 in partial satisfaction of his claim.

The Landlord testified that she returned the pet damage deposit in the amount of $450.00 to the Tenant on May 5, 2016.

The Landlord is also seeking to recover the cost of the $100.00 filing fee for the hearing.

In response, the Tenant testified that on April 1, 2016, she asked the Landlord if there was anything about the rental unit that she needed to be aware of and the Landlord

never mentioned an issue with mold. The Tenant submitted that because the Landlord did not mention anything about mold, the Tenant was induced into signing the tenancy agreement.

The Tenant submits that on April 19, 2016 she was contacted by the previous Tenant of the rental unit who told her there was mold in the rental unit. The Tenant submitted that the tenancy contract is void because the Landlord concealed information about the mold.

The Landlord responded to the Tenant's testimony by stating that the previous Tenant gave the Tenant false information about the rental unit. The Landlord testified that there was nothing wrong with the rental unit and that she did not lie about anything. The Landlord submitted that she paid over $1,000.00 for the mold testing that shows the rental unit is clean and mold free.

The Landlord provided documentary evidence of an email sent from the Tenant to the Landlord on April 25, 2016. The email states: *"The existence of mould at the rental unit is a breach of a material term of the contract. You have been given a reasonable opportunity to fix the problem, but it remains. You were provided with the Axiom report, but have failed to take most of the expert recommended steps listed in the report…"*

Analysis

Based on the evidence before me, the testimony of the Tenant and Landlord, and on a balance of probabilities, I make the following findings:

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 (2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

> *(a) is not earlier than one month after the date the landlord receives the notice,*
> *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
> *(c) 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.*
> *(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.*
> *(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

I find that the parties entered into a fixed term tenancy agreement on April 1, 2016, and the rights and obligations of the Tenant took effect on April 1, 2016.

I find that the Tenant failed to end the tenancy pursuant to the requirements set out in section 45 of the Act. Although the Tenant's email letter dated April 25, 2016, indicates the Landlord was given a reasonable opportunity to fix the problem, there is no documentary evidence before me that the Tenant provided the Landlord with a breach letter. The Tenant did not provide proper written Notice to the Landlord that there was a breach of a material term that needed to be corrected within a reasonable period or else the tenancy would end. I also note that the Landlord arranged for mold testing and had the results within nine days of the Tenant's allegation of mold.

I prefer the Landlords evidence that there was no mold in the rental unit. The Tenant did not actually see mold in the rental unit and the Tenant provided insufficient evidence to establish that there was mold in the rental unit. I note that the Landlord provided the Tenant with the results of mold testing prior to May 1, 2016, the day the Tenant had the right to move into the rental unit.

I find that the Tenant is responsible to pay the rent for the rental unit until the Landlord was able to rent the unit. The Landlord suffered a loss of rent for the month of May 2016, and for half the month of June 2016. The Landlord is entitled to $1,350.00 for loss of rent.

I find that because the Tenant failed to move into the rental unit and ended the tenancy improperly, the Landlord is entitled to claim the liquidated damages amount of $500.00 as set out within the tenancy agreement.

I order that the Landlord can keep the security deposit in the amount of $450.00 in partial satisfaction of the Landlord's claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in her claim, I order the Tenant to repay 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 $1,950.00. This amount is comprised of $1,350.00 for rent; $500.00 for liquidated damages; and the $100.00 fee paid by the Landlord for this hearing. After offsetting the security deposit of $450.00 towards the claim of $1,950.00, I find that the Landlord is entitled to a monetary order in the amount of $1,500.00. This monetary 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 entered into a fixed term tenancy agreement and failed to move in to the rental unit. The Landlord has established a monetary claim in the amount of $1,950.00.

I order that the Landlord can keep the security deposit in the amount of $450.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of $1,500.00.

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 04, 2016

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Residential Tenancy Branch