



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MND, FF

Introduction

This hearing was convened in response to an application by the landlord under *the Residential Tenancy Act* (the Act) for a monetary order in the amount of \$2880.00 in satisfaction of rental revenue loss due to a claimed breach of Section 45(2) of the Act by the tenant, as well as compensation for damage to the unit.

The tenant, their legal advocate, and the landlord participated in the hearing with their submissions, relevant document evidence and relevant testimony during the hearing. Both parties acknowledged receiving the evidence of the other. The landlord and tenant were each given opportunity to settle their dispute to no avail. The parties were provided opportunity to be heard and orally provide relevant evidence, and were given opportunity to respond to it and to specific questions asked by the other party and the Arbitrator during the hearing. Despite the abundance of evidence, only evidence relevant to the landlord's claim has been considered.

Preliminary matters

Given discrepancies with their application and evidence the landlord was asked to clarify their claim. The landlord testified they seek loss of revenue of \$1800.00, labour and painting of \$1500.00 and \$500.00 for installation of a dishwasher. It must be noted the landlord's claim exceeds their un-amended monetary claim on application.

Issue(s) to be Decided

Is the tenant's Notice to end the tenancy valid?
Is the landlord entitled to compensation for loss?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence of this matter is as follows. The undisputed testimony and evidence is that the tenancy started June 01, 2016 as a fixed term agreement to May 31, 2017 and has since ended. Under the tenancy agreement rent in the amount of \$1800.00 was payable in advance on the first day of each month.

The landlord claims the tenant breached the fixed term tenancy agreement by vacating the rental unit at the end of the first month of occupancy. The tenant claims they vacated the rental unit June 30, 2016 due to a Tenant's written notice pursuant to Section 45(3) of the Act personally given to the landlord June 07, 2016. The tenant claims the landlord imposed unreasonable restrictions on the tenant's right to quiet enjoyment and right to have guests. The tenant subsequently provided their Notice to end dated June 17, 2016.

The tenant provided a copy of the Tenant's notice titled *Written Notice for Failure to Comply with a Material Term*: dated June 06, 2016 (breach notice). In this Notice the tenant states that from the outset of the tenancy the landlord was attempting to restrict their ability to have guests, contrary to the Act and tenancy agreement. The tenant cited the landlord's handwritten addition to the tenancy agreement stating the tenant could not have overnight guests, as well as the landlord trying to keep out the tenant's friends helping the tenant move into the unit in the first days of the tenancy. The tenant also stated the landlord told them their children could not play in the yard and that the tenant could not shower after 10:00 p.m., or do laundry more than once a week. The tenant stated in their Notice that the landlord's conduct in these areas unreasonably restricted their right to freedom from unreasonable disturbance and the tenant's right of access by their guests.

The landlord disputed the tenant's characterization of their conduct. They testified that their conduct was misinterpreted by the tenant; however they did not dispute their opposition to the tenant having overnight guests or persons not known to them, as this is a stipulation the tenant agreed to before signing the tenancy agreement. The landlord testified their intentions rested on their right and obligation to ensure the integrity and security of the residential property and in doing so, their own security and that of the tenant.

In their breach notice the tenant cited the landlord purportedly "harassed" a friend who came to the rental unit to pick up the tenant's children. The landlord denied he harassed the friend and that they were solely making enquiries. None the less, the tenant's Notice stated the tenant felt that a reasonable amount of time to correct the breach to be 3 days from "today" (June 07, 2016) and on provision of written verification

the landlord would not abridge the tenant's rights in the future. The tenant's Notice ended by stating they would end the tenancy if the matter was not corrected, in writing, by June 10, 2016. The landlord almost immediately responded to the tenant in writing explaining their version of the facts, their denial they harassed the tenant's friend, and their understanding of the events. None the less, the landlord stated their agreement the tenancy should soon end if the tenant was not comfortable with certain conditions or the reasons for them.

The tenant determined from the landlord's written response they would continue to restrict guests and that moving forward this was not acceptable to them. On June 17, 2016 the tenant informed the landlord they were ending the tenancy June 30, 2016.

Both parties provided a copy of the tenancy agreement, the tenant's written breach notice and the landlord's written response to the notice. The landlord also testified at length of their opposition to overnight guests and their reasons in part related to the tenant's original agreement not to have overnight guests. They also at length in respect to the tenant's marital status vis a vis their guests, and of their lawful obligation to control the residential property.

The landlord testified that following the tenant's move they incurred a rent revenue loss for the month of July 2016, therefore are claiming lost rent revenue for that month in the amount of \$1800.00. The landlord also claims \$1500.00 for their labour to find a new tenant, and for painting and fractional cost of installing a dishwasher in the amount of \$500.00: both at the request of the incoming tenant for August 2016. The landlord testified these costs were required to mitigate revenue losses and therefore should be borne by the tenant.

Analysis

I have reviewed all the relevant evidence in this matter. On preponderance of the evidence I find the tenant's written notice to the landlord of a breach relating to the landlord's restriction of guests to be in respect of a material term of the tenancy agreement. I find the landlord's written response to the tenant's breach notice, and consequently their testimony to be sufficiently un-reassuring that going forward the landlord would cease to abridge the tenant's right to have overnight guests or ongoing right to quiet enjoyment. In light of which I accept the tenant's position that 10 days after giving the breach notice they felt compelled to notify the landlord they were ending the tenancy. In this matter I find the covenant of quiet enjoyment was irreparably breached so as to significantly interfere with the tenant's ongoing use of the rental unit.

I find the tenant gave the landlord written notice of a material breach under **Section 45(3)** of the Act and was at liberty to end the tenancy thereafter, without the requirement of a tenant's Notice pursuant to Section 45(1). As a result of all the above, I find the tenant's Notice to end the tenancy valid and in compliance with **Section 52** *[form and content of notice to end tenancy]*. Therefore I must dismiss the landlord's claim of loss of revenue for July 2016. I further find that the landlord's claim for loss respecting painting and dishwasher installation, so as to satisfy an incoming tenant, is not a responsibility of the applicant tenant. As a result of all the above I dismiss the landlord's application in its entirety.

Conclusion

The landlord's application is dismissed in its entirety.

This Decision is final and binding on both parties.

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: January 16, 2017

Residential Tenancy Branch