



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing, and each gave affirmed testimony.

During the course of the hearing the tenant advised that he has vacated the rental unit, and therefore, the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is withdrawn. Since the tenant has moved out of the rental unit, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement. Also, the tenant has received the security deposit, and I dismiss that portion of the tenant's claim.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for early end of the tenancy?
- Should the tenant recover the filing fee from the landlord?

Background and Evidence

The tenant testified that this month-to-month tenancy started on December 4, 2015 and ended on November 16, 2016. Rent in the amount of \$780.00 per month was payable, but there was no written tenancy agreement and the date rent was due was random. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$390.00, all of which has been returned to the tenant. The rental unit is an apartment in an apartment complex, and no paperwork was signed by either party.

The tenant further testified that the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on October 1, 2016. A copy has not been provided by either party. The tenant notified the landlord by telephone and emailed the landlord a notice to vacate the rental unit earlier, by November 14, 2016. The landlord responded by email the same day, and the tenant returned the unit key and storage key on November 16, 2016 because he needed to enter in order to finish cleaning. The tenant is not sure when the gate key and a mailbox key were returned, but believes it was the first week of December, 2016.

The landlord gave the tenant the 2 Month Notice to End Tenancy 1 day late, which ought to have been served prior to the first of the month. The tenant claims back that day of rent in addition to 14 days of rent paid for the last month of the tenancy after having given the landlord 10 days notice to end the tenancy earlier than the landlord's notice. Including the filing fee, the tenant's claim is \$464.00.

The landlord testified that the notice to end the tenancy given to the tenant was dated September 30, 2016 but the landlord wasn't able to get ahold of the tenant until the following morning, and the landlord did not collect any rent for November.

The tenant's email stated that the tenant was planning to vacate but the landlord didn't feel it was certain. It is dated November 4, 2016 and says that the tenant will finish moving by the 14th and do his best to restore the rental unit to a tidy manner. The landlord responded asking about cleaning. It wasn't for sure, the tenant's message says he was "planning to vacate on the 14th," but didn't move out until the 16th. The landlord found out on the 16th that the tenant had moved out.

The landlord received the mailbox key and key for the front door of the building on December 7, 2016 and waived damages.

Analysis

The *Residential Tenancy Act* requires a landlord to pay compensation to a tenant in the equivalent of 1 month's rent payable under a tenancy agreement if the landlord serves a 2 Month Notice to End Tenancy for Landlord's Use of Property, which is to be paid on or

before the effective date. It also provides that a tenant may give the landlord 10 days notice to vacate earlier than the effective date of the landlord's notice. If the tenant does so, the tenant pays rent to the effective date of the tenant's notice on the date that the notice is given, and the landlord is still required to compensate the tenant the equivalent of 1 month's rent:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

In this case, the landlord did not collect rent for November, 2016 which would have been the final month of the tenancy.

The tenant's claim is for reimbursement of rent paid from the date of the tenant's notice to the end of the tenancy, but the tenant didn't pay the landlord the rent when the tenant sent the email to the landlord. The tenant's notice must not be ambiguous, and the landlord testified that the email was not certain, and the tenant didn't vacate on the date set out in the tenant's email. Further, the *Act* states:

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.

In this case, the tenant's notice was not signed by the tenant, and in order to be effective, a tenant cannot give written notice by email. Further, no one has provided any evidence for this hearing.

The tenant also claims 1 day rent because the landlord served the notice a day late. The *Act* requires a landlord to serve such a notice the day the rent is payable under the tenancy agreement, and the tenant testified that rent was payable randomly and there was nothing in writing from either party. Therefore, I find that the landlord was not late and the tenant is not entitled to any compensation.

In the circumstances, I am not satisfied that the tenant has established that any further compensation should be awarded and I dismiss the tenant's application.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is withdrawn.

The balance of the tenant's application is hereby 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: February 16, 2017

Residential Tenancy Branch