



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF; 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 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:

- 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 tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the applications or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

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

On January 17, 2016 the parties signed a tenancy agreement indicating the tenancy was to begin on February 1, 2016 on a fixed term of one year until February 1, 2016. The landlord testified that the fixed term end year of 2016 indicated on the tenancy agreement was a clerical error and should read 2017. The tenant did not dispute that the agreement between the parties was in regards to a fixed term tenancy scheduled to start on February 1, 2016 and end on February 1, 2017.

Rent in the amount of \$885.00 was payable on the first of each month. Upon signing the tenancy agreement, the tenant remitted a security deposit in the amount of \$442.50.

On January 23, 2016 the tenant advised the landlord by way of telephone that she would not be renting the unit and requested the return of the security deposit.

Upon receipt of the tenant's notification to terminate the lease, the landlord advertised the rental unit and secured a new tenancy on February 1, 2016 effective February 15, 2016.

Landlord Claims

The landlord's application indicates the landlord seeks a monetary award of \$442.50 for loss of rental income and filing fee.

During the hearing the landlord testified to a loss of rental income in the amount of \$342.58 (\$885.00 rent/31 days = \$28.55 daily rental rate x 12 days) and \$100.00 for the filing fee for a total of \$442.58. The landlord testified that all efforts were made to reduce the loss and provided documentary evidence of advertising.

Tenant Claims

The tenant seeks the return of her security deposit in the amount of \$442.50.

The tenant testified that the landlord misrepresented the unit as safe and for this reason she sought to end the tenancy. It is the tenant's position that despite her notice on January 23, 2016 to end the tenancy prior to even taking occupancy, the landlord's refusal to provide keys at her request on February 12, 2016 negates the landlord's entitlement to rent. In addition the tenant contends the landlord failed to mitigate its loss on the basis that the landlord did not make a sufficient effort on January 23, 2016 to secure a tenancy effective February 1, 2016.

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

Analysis

Pursuant to section 16 of the *Act*, 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.

The tenancy, that is, the right to occupy the unit, often begins at a later date. In this case, the tenancy agreement began on January 17, 2016 and the tenancy was to commence on February 1, 2016. Because the tenancy agreement began on January 17, 2016, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

On January 23, 2016 the tenant provide oral notice of her intent to end the tenancy. I am satisfied the tenant's oral notice on January 23, 2016 constitutes effective notice to end the tenancy as the parties acted upon this notice with the tenant requesting the return of her security deposit and the landlord commencing efforts to secure a new tenancy.

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on February 1, 2017. Although the tenant provided notice of her intent to end the tenancy, 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*.

Pursuant to the *Residential Tenancy Policy 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, specifically the landlord's misrepresentation of the building as safe.

A tenant ending a fixed term tenancy for cause bears the burden to prove a material term of the tenancy agreement has been breached. I find the tenant provided insufficient evidence to establish 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*.

Pursuant to the *Residential Tenancy Policy 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 testimony and documentary evidence I find that the landlord mitigated its loss by continuous advertising of the unit but despite this could not secure a tenancy until February 1, 2016, to take effect February 15, 2016. Therefore I find that the landlord is entitled to the \$342.50 loss of rental income amount as indicated in the landlord's application.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$442.50.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$442.50 security deposit in full satisfaction of the monetary award.

Conclusion

The landlord is entitled to \$442.50 in loss of rent. I order the landlord to retain the \$442.50 security deposit in full satisfaction of the monetary award.

I dismiss the tenant's entire application without leave to reapply.

Dated: March 24, 2017

Residential Tenancy Branch