



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC MNR MNSD FF CNC MNDC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- 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;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for cause pursuant to section 46;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for loss pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

At the outset of the hearing, the parties advised that the landlord had already been granted an order of possession on March 14, 2017 following the landlord’s application by way of a Direct Request Proceeding based upon a 10 Day Notice to End Tenancy for unpaid rent. The landlord was also granted a monetary order in the amount of \$3600.00 for unpaid rent for the month of February 2017. The landlord advised that he has made another application for the unpaid rent for the month of March 2017 which is scheduled for a hearing on August 2, 2017. Consequently, the issues raised by the landlord in this application are moot and the landlord withdrew his application.

As an order of possession has already been granted in relation to this tenancy, the tenant's application to cancel the 1 Month Notice to End Tenancy is also moot. I declined to hear any evidence or make any finding on this matter. Similarly, the tenant's application for return of the security deposit is also a moot point as the landlord has been granted a monetary order in the amount of \$3600.00 which is in excess of the \$2100.00 security deposit retained by the landlord. Pursuant to section 38 of the Act, the landlord may retain from the security deposit and/or pet deposit an amount the director has previously ordered the tenant to pay to the landlord. I also note that at the time of writing this decision, no review consideration request has been made by the tenants of the March 14, 2017 decision.

As a result of the above, the only outstanding issue is the tenant's application for monetary compensation for loss.

Issues

Are the tenants entitled to a monetary award for loss?

Background and Evidence

The tenancy began on April 1, 2016 with a monthly rent of \$3600.00 payable on the 1st day of each month. The lease was for a one year fixed term ending on March 31, 2017 with an option to carry on a month-to-month basis after the end of the initial term. The tenants paid a security deposit of \$1800.00 and a pet deposit of \$300.00 at the start of the tenancy which the landlord continues to hold.

The tenants are seeking compensation in the amount of \$7200.00 which is the equivalent of 2 month's rent. The tenants submit they should be compensated for this amount due to the landlord breaking the fixed term lease before the expiry of the initial one year term.

Analysis

The tenancy was ended pursuant to the landlord's successful application for an order of possession based on a 10 Day Notice to End Tenancy for unpaid rent. The tenancy was not ended by the landlord as alleged by the tenants. Prior to the landlord issuing the tenants a 10 Day Notice, the landlord issued the tenants a 1 Month Notice to End Tenancy for Cause. The landlord is within his right under the Act to issue such Notice during a fixed term tenancy and the tenants were within their right to dispute this Notice. However, the merits of the 1 Month Notice are a moot point as the tenancy has since ended pursuant to the 10 Day Notice. There is no merit to the tenants claim for compensation equivalent to 2 months' rent for the landlord allegedly breaking the lease.

The tenants were still in the rental unit at the time of the hearing and suffered no loss. They filed an application to dispute the landlord's 1 Month Notice and had they been successful, and the tenancy had not ended pursuant to the 10 Day Notice, their tenancy would have continued.

Conclusion

The landlord's application is withdrawn.

The tenant's application is dismissed in its entirety 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: March 20, 2017

Residential Tenancy Branch