



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

On October 14, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

Both parties attended the hearing. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- 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 parties agreed that the tenancy began in January 2016, as a month to month tenancy. Rent in the amount of \$1,800.00 was due on the first day of each month. The rent was reduced to \$1,500.00 per month in June or July 2016. The Tenant paid the Landlord a security deposit of \$925.00.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of October 2016.

The Landlord testified that the Tenant sent an email dated September 29, 2016, stating that because the house was placed for sale, the Tenant is moving out without paying October 2016, rent. The Landlord provided a copy of the email.

The Landlord testified that the rental property was never sold and the Tenant moved out on October 10, 2016.

The Landlord testified that the Tenant still owes the rent for October 2016, and is seeking to recover the \$1,500.00.

The Landlord made application to keep the security deposit within 15 days of the end of the tenancy. The Landlord seeks to retain the security deposit of \$925.00 and requests a monetary order of \$575.00 for the balance of the rent owing.

The Landlord is also seeking to recover the cost of the filing fee.

In response, the Tenant submitted that the Landlord told her the house would not be put up for sale while she is renting it. She submitted that she ended the tenancy and did not pay the rent because the house was put up for sale and she is entitled to 1 month free rent.

The Tenant acknowledged sending the email to the Landlord.

The Tenant submitted that she also provided the Landlord with a written notice to end the tenancy on September 1, 2016. The Tenant did not provide a copy of the written notice to end tenancy.

Analysis

Section 45 (1) of the Act states a Tenant may end a periodic 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, and*
- (b) 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.*

Section 49 (5) of the Act states that a landlord may end a tenancy in respect of a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
- (b) all the conditions on which the sale depends have been satisfied, and*
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*

Section 51 (1) of the Act states: *a tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

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

The Tenant did not end the tenancy in compliance with the requirements of section 45 of the Act. The Tenant testified she gave the Landlord written notice to end the tenancy on September 1, 2016. In order to be an effective notice to end tenancy, the notice must be served to the Landlord on the day before the rent was payable. According to the Tenant's testimony the notice to end tenancy self corrects to be October 31, 2016.

The Tenant did not have the right to withhold payment of rent based on the property being put up for sale. The entitlement to compensation is only triggered when a Landlord issues a 2

Month Notice To End Tenancy For Landlord's Use Of Property, in circumstances where the conditions for sale have been satisfied and the purchaser intends to occupy the rental unit. Since there was no sale agreement and no 2 Month Notice issued, the Tenant did not have the right to withhold payment of the rent.

I find that the Tenant owes the Landlord \$1,500.00 for unpaid rent for October 2016.

I order that the Landlord can keep the security deposit in the amount of \$925.00 in partial satisfaction of the 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. 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 \$1,600.00 comprised of \$1,500.00 in unpaid rent for October and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$925.00 towards the claim of \$1,600.00 I find that the Landlord is entitled to a monetary order in the amount of \$675.00. 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 did not end the tenancy in accordance with the Act and did not have the authority to withhold payment of the rent owing under the tenancy agreement for October 2016.

I order that the Landlord can keep the security deposit in the amount of \$925.00 in partial satisfaction of the claim.

The Landlord is granted a monetary order for the balance of the unpaid rent and the cost of the filing fee in the amount of \$675.00.

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: April 18, 2017

Residential Tenancy Branch