



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- 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, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified regarding the following facts. This fixed-term tenancy began on August 1, 2016, and was to end on August 1, 2017. Monthly rent was set at \$1,700.00, and the landlord collected a security deposit of \$850.00, which the landlord still holds. A copy of the tenancy agreement was included in the landlord's evidence.

The tenant moved out five months early, on February 28, 2017, because of noise from the upstairs tenant. The landlord testified that they had addressed the issue by speaking

to the tenants above, but the tenant stated that the issue was not resolved and moved out. The landlord maintained that the previous tenants had never complained, nor did the tenants who had moved in shortly thereafter. The landlord testified that the upstairs tenants were residing there before the tenant had moved in, and no issues were ever raised by previous tenants. She also testified that the tenant who resides next door never had an issue, and still resides there. The landlord is seeking \$850.00 in compensation as the tenant moved out before the end of this fixed-term tenancy. The landlord mitigated her losses, and was able to find a new tenant to fill the vacancy. The landlord acknowledged receipt of the tenant's forwarding address.

The tenant testified in this hearing that despite the landlord raising the issue with the tenants upstairs, the noise continued and worsened. She testified that on August 1, 2016 that there was a loud party that took place between 9:30 p.m. and 11:00 p.m. She maintained that the noise was extremely loud and sounded like running and jumping, and her mother had sent an email regarding the noise, which was not acknowledged by the landlord. The tenant's witness testified in the hearing that she was present during the party on August 1, 2016, and was able to confirm that the noise was from a loud party upstairs.

The tenant testified that she felt that she did not have any other options other than to move out before the end of this fixed-term tenancy. She was frustrated that the landlord did not address the issue, and decided to leave. She testified that she did give the landlord five to six weeks' notice.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The landlord provided undisputed evidence at this hearing that the tenant had moved out before the end of this fixed-term tenancy. I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out a month earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that she was able to re-rent the suite, and was only claiming half the rent as compensation for her loss. I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for March 2017, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$850.00 for half a month of lost rental income due to the early termination of this tenancy.

The landlord continues to hold the tenant's security deposit of \$850.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$850.00 in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I am allowing the landlord to recovery the filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's security deposit of \$850.00 in satisfaction of the monetary award for the tenant's failure to comply with sections 44 and 45 of the *Act*.

I issue a Monetary Order in the amount of \$100.00 in the landlord's favour, which allows the landlord to recover the filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 14, 2017

Residential Tenancy Branch