



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNR FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67; 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 a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified regarding the following facts. This fixed-term tenancy began on June 6, 2015, with rent set at \$1,050.00 per month. A new tenancy agreement was signed a year later for a fixed-term tenancy commencing July 1, 2016, with monthly rent set at \$1,080.00. The landlord collected a security deposit of \$525.00 at the beginning of the tenancy, which was returned to the tenant on February 7, 2017, after the tenant moved out early on January 21, 2017. Copies of both tenancy agreements were submitted in the tenant's evidence. Both agreements stated that "the suite is only available on a yearly lease basis", and "the Tenant agrees to rent on a one year lease basis".

The tenant moved out five months early, on January 21, 2017, because she had purchased her own home. The landlord testified that because she was often travelling for work, the tenant paid her by way of twelve post-dated cheques. The landlord testified that the tenant gave her verbal notice around the end of December 2016 that she had purchased a condominium, and was moving out in the new year. The landlord returned to the tenant her security deposit in full, as well as the post-dated cheques for the remainder of the tenancy, with the exception of the February 2017 cheque, which the landlord deposited, but was told by the bank that a stop payment was placed on January 17, 2017, without the landlord's knowledge. The landlord is seeking compensation equivalent to one month's rent 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 for March 1, 2017 despite the fact that February 2017 through to April 2017 was an extremely busy time of year for her.

The tenant testified in this hearing that she did not know her obligations as a tenant about how to end a tenancy, and did make an effort to notify the landlord of her plans, and give her ample opportunity to fill the vacancy. The tenant maintained that the landlord failed to mitigate her losses by not posting an advertisement for the suite until January 13, 2017. The tenant testified that she thought her verbal notice was adequate as the landlord did acknowledge the notice, and the tenant's security deposit was returned to her in full. The tenant also testified she was not certain that this tenancy was a fixed-term tenancy as she felt the written tenancy agreement was unclear about the actual term of the tenancy.

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 tenant testified that the written tenancy agreement was unclear as to the term of her tenancy, and whether the tenancy was on a month-to-month, or was considered fixed term. I note that the tenant did submit copies of the tenancy agreements in her evidence, including one for a tenancy commencing July 1, 2016. I find that, although the written tenancy agreement does not state that this tenancy is a “fixed-term” tenancy, nor is the end date specified on the agreement, the tenancy agreement does indicate that “the tenant agrees to rent on a one year lease basis”, and “the suite is only available on a yearly lease basis”. The start date of the tenancy is clearly stated on the form as “July 1, 2016”. On this basis, I find that this tenancy is clearly a one year, fixed-term tenancy commencing on July 1, 2016, and sections 44(1)(b) and 45(2) of the *Act* apply to this tenancy.

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 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 for March 1, 2017, and was only claiming rent for February 2017 as compensation for her loss. The tenant disputed this, stating that the landlord did not post the suite for rent until January 13, 2017. The landlord stated that she had an extremely busy work schedule, but made an effort to prepare and re-rent the suite as soon as possible. The landlord posted an ad on January 13, 2017, which was prior to

the tenant's move-out on January 21, 2017. I find that the landlord had provided a sufficient explanation for why she was unable to rent the suite for immediate occupancy in February 2017. I find that the tenant failed to comply with the Act, and this contributed to the landlord's monetary 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 February 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 \$1,080.00 for a month of lost rental income due to the early termination of this tenancy.

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

Conclusion

I issue a Monetary Order in the amount of \$1,180.00 in the landlord's favour, in satisfaction of the monetary award for the tenant's failure to comply with sections 44 and 45 of the *Act*, and 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 16, 2017

Residential Tenancy Branch