



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act ("the "Act").

The Landlord filed an Application requesting an order of possession; to recover unpaid rent and /or utilities; and to recover the cost of the filing fee.

The Tenant filed an Application for the return of the security deposit and to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties testified that the Tenant moved out of the rental unit on December 29, 2016. The Landlord's request for an order of possession is not required.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

- Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Parties testified that the tenancy began on September 1, 2016, as an 8 month fixed term tenancy to end on April 30, 2017. Rent in the amount of \$650.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$300.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not comply with the tenancy agreement and did not give the Landlord any notice that she was ending the tenancy.

The Landlord testified that the Tenant moved out of the rental unit on December 29, 2016. The Landlord observed the Tenant moving her possessions out of the rental unit on December 28, 2016, and found the rental unit empty on December 29, 2016.

The Landlord testified that he suffered a loss of rent for the next four months, because he was unable to re-rent the unit. The Landlord testified that he attempted to re-rent the unit by placing an advertisement on a local university webpage on January 8, 2017. The Landlord testified that the advertisement was active until February 6, 2017. The Landlord testified that he did not advertise the unit further on any other website.

The Landlord testified that he was unable to rent the unit out between January 2017, and the end of April 2017. The Landlord is seeking \$2,600.00 for a loss of rent.

The Landlord testified that he received the Tenant's forwarding address in writing on December 28, 2017.

In response, the Tenant submitted that she is seeking compensation from the Landlord in the amount of \$5,800.00. The Tenant is seeking to recover \$650.00 per month, from September 2016, to the end of April 2017. The Tenant is also seeking double the amount of the security deposit.

The Tenant submitted that the Landlord did not provide and maintain the unit in compliance with the health, and safety standards required. The Tenant submitted that in September she noticed some mouse droppings. She testified that traps were set and a mouse was caught. She testified that the infestation worsened in October. The Tenant provided photographs of the mouse and the mouse droppings.

The Tenant testified that she informed the Landlord of the mouse problem. The Tenant testified that she went away between December 6, and December 28, and found that the mouse problem had worsened.

The Tenant testified that she did not want to return to the rental unit due to health and personal safety concerns. She testified that she sent a letter to the Landlord dated December 30, 2016, after she moved out.

The Tenant testified that the Landlord breached section 10 of their tenancy agreement which states that the Landlord must comply with health, safety and housing standards required by law.

The Tenant testified that she did not pay any rent for January 2017, onwards.

The Tenant testified that the Landlord did not conduct a move in inspection with her at the start of the tenancy. There was no move out inspection, because the Tenant moved out without giving any notice.

In response, the Landlord testified that there was bird feeders and bird seed on the property which was moved into the garage and attracted mice. The Landlord testified that he set traps. The Landlord testified that the problem the Tenant was having was not brought to his attention.

The Landlord acknowledged that a move in inspection was not conducted at the start of the tenancy.

Analysis

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies states that:

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For example, during the fixed term a landlord may end the tenancy if the tenant fails to pay the rent when due. A proper Notice to End Tenancy must be served on the tenant. During the fixed term a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement.

The Residential Tenancy Branch Policy Guideline # Unconscionable and Material Terms states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

Section 7 of the Act states,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Security Deposit

The Landlord failed to conduct a move in inspection with the Tenant and has therefore extinguished his right to claim against the security deposit for damage.

The Landlord applied for dispute resolution on January 5, 2017, which was within 15 days of the Tenant moving out and providing a written forwarding address. As such, the doubling of the security deposit provision of section 38 of the Act does not apply.

I find that the Tenant is entitled to the security deposit in the amount of \$300.00.

Rent

I find that the Tenant did not provide notice to the Landlord that she was moving out prior to the end of the fixed term tenancy. The Landlord had no advance notice to prepare to advertise the rental unit.

Pursuant to section 44 of the Act, the tenancy ended on December 30, 2016, when the Tenant breached the tenancy agreement by vacating the rental unit. While I find that the tenancy ended, the Tenant was still responsible to pay the rent until the end of the fixed term tenancy, or until the Landlord found a new Tenant.

I find that the Landlord attempted to minimize the loss, by advertising the rental unit, but restricted the advertisement to a university website, and only ran the advertisement for 30 days.

I do not find that the Landlord's actions to minimize the loss were entirely reasonable. The Landlord restricted the advertisement to a university website which I find reduces the likelihood of finding a new tenant. In addition, the Landlord only ran the advertisement for 30 days, but is seeking compensation of 4 months' rent.

In the circumstances, I find it reasonable to grant the Landlord compensation for a loss of rent for the months of January 2017, and February 2017. The Landlord's request for compensation for March 2017, rent and April 2017, rent are dismissed.

I grant the Landlord compensation in the amount of \$1,300.00.

Tenants Claim for Compensation

I find that the Tenant did not give the Landlord sufficient notice to end the tenancy for a breach of a material term of the tenancy. The Tenant did not inform the Landlord in writing that there was a problem that needed to be corrected within a reasonable period of time, or the Tenant will end the tenancy.

The Tenant chose to move out and gave the Landlord a letter after she moved out. In addition there is insufficient evidence from the Tenant that she notified the Landlord of the mouse issue and that the Landlord failed to take action.

I find that the Landlord did not breach the Act, regulation or tenancy agreement. The Tenant's claim for compensation to recover \$650.00 per month, from September 2016, to the end of April 2017, is dismissed.

Monetary Awards

The Tenant is awarded \$300.00 for the security deposit.

The Landlord is awarded \$1,300.00 for a loss of January 2017, and February 2017, rent.

As to the recovery of the filing fees the parties paid for the Applications for dispute resolution, I find both parties were equally successful with their applications, and therefore I do not award compensation for the filing fees.

After applying the \$300.00 security deposit towards the Landlord's claim of \$1,300.00, I grant the Landlord a monetary order in the amount of \$1,000.00. This order must be served on the Tenant and may be enforced in Provincial Court.

Conclusion

The Tenant failed to end the tenancy in accordance with the *Act* and tenancy agreement. The Landlord extinguished his right to apply for the security deposit by failing to perform a move in inspection.

I find that the Tenant owes the Landlord \$1,000.00 for the loss of January 2017, and February 2017, rent.

The Landlord is granted a monetary order in the amount of \$1,000.00.

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: June 27, 2017

Residential Tenancy Branch