



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an order for lack of notice (loss of rent) pursuant to section 67; an order allowing the landlord to retain the tenants' security and pet damage deposit towards a monetary award as sought; and authorization to recover the filing fee for this application from the tenant(s) pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution with the notice of hearing as well as the landlord's evidentiary submissions for this hearing. The tenant did not make documentary or other evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for lost rent due to lack of proper notice?
Is the landlord entitled to recover the filing fee for this application from the tenant(s)?

Background and Evidence

This tenancy began on March 1, 2016 as a month to month tenancy. The monthly rental amount of \$1250.00 was payable on the first of each month. The landlord continues to hold the \$625.00 security deposit and the \$625.00 pet damage deposit paid by the tenant(s) at the outset of this tenancy. The landlord sought to retain both deposits towards a monetary amount of \$1250.00 in compensation for the tenant's failure to provide notice to end tenancy and an additional \$100.00 for the cost of his filing fee for this application.

The landlord claimed that the tenants did not provide sufficient notice in accordance with the Act. The landlord submitted a copy of the tenants' notice to end tenancy. The

notice was not served to the landlord but placed on a counter within the rental unit. The landlord testified that he located it when he attended the unit for a scheduled inspection. The tenants' note provided reference to the Residential Tenancy Act and the requirement that the tenants provide 30 days' notice to end tenancy. The tenants' note also stated that they would not provide 30 days' notice because the landlord had been "negligent" in failing to make repairs to the rental unit as requested. At this hearing, the tenant testified that any requests for repairs were provided by text message to the landlord. The tenant did not submit a copy of any text correspondence between the parties.

The tenants left their notice to end tenancy in the rental unit on February 19, 2017 and vacated the residence the same day. At this hearing, Tenant CR testified that neither she nor her co-tenant provided any notice to the landlord prior to February 19, 2017. The landlord testified that he was not able to re-rent the unit although he did advertise online in an attempt to rent the unit from the date the tenants moved out. The landlord explained that the rental property was for sale during the time the tenants resided in the rental unit and after they vacated the unit. He testified that the rental property was sold by June 2017. The landlord testified that, prior to that date he was unable to re-rent the property.

Analysis

The tenant was aware that the Act requires a tenant to make written requests and give the landlord an opportunity to make repairs before taking any further action. During this hearing, the tenant acknowledged that she was also aware text messages were not considered sufficient as a form of written request for repairs. For this reason, the tenant did not submit the text messages for my consideration. Section 33 of the Act allows tenants to pay for repairs and require the landlord to reimburse them. The tenant testified that she had no confidence that the landlord would repay herself and her co-tenant for any repairs and therefore, the two of them made a calculated decision to vacate the residence in order to ensure their health and well-being.

Section 45 of the Act was partially reproduced within the tenants' notice to end tenancy. I provide two relevant subsections below,

- 45** (1) 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.

... (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the tenant(s) did not provide sufficient evidence to prove that they gave their landlord an opportunity to correct an issue or make a repair. I find that the landlord presented evidence to prove that the tenants did not provide sufficient notice. Further, I accept his testimony that he lost a months' rent as a result of the tenants' failure to provide sufficient notice in accordance with the Act. As the tenants failed to comply with the Act, the landlord is entitled to recover his loss of rent. The landlord proved that he lost rent and I find that the amount he has sought in compensation is a reasonable amount in the circumstances.

At this hearing, the tenants argued that the landlord did not sufficiently mitigate his claim. I note that the landlord's candid evidence was that he intended to sell the property. However, the tenants are required to give sufficient notice, were aware of that requirement and chose not to do so. Further, I accept the landlord's testimony that he made attempts to re-rent the property. As the sale of the landlord's property did not close until June 2017 (3.5 months after the tenants vacated the rental unit), I find that the landlord is entitled to recover one months' rent (\$1250.00) as requested.

In accordance with section 72 of the Act, I find that the landlord is entitled to retain the tenants' security (\$625.00) and pet damage deposit (\$625.00) totalling \$1250.00 towards his monetary award.

As the landlord was successful in his application, I find that the landlord is also entitled to recover his \$100.00 filing fee.

Conclusion

I allow the landlord to retain the tenants' security and pet damage deposits totalling \$1250.00 towards his total monetary award of \$1350.00.

I issue a monetary order in the amount of \$100.00 to the landlord.

The landlord is provided with this Order in the above terms and the tenant must be served with 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: July 25, 2017

Residential Tenancy Branch