



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPB, MND, MNR, MNSD, MNDC, FF, SS

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed for an Order of Possession for unpaid rent and breach of the agreement. The Landlord also applied for a Monetary Order for: damage to the rental unit; unpaid rent; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); to recover the filing fee from the Tenant; and for a substituted service order to serve documents in a different way.

Preliminary Issues

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application by registered mail. However, the Landlord denied receipt of the Tenant's 13 pages of documentary evidence which had been served by the Tenant prior to the hearing.

The Tenant provided the Canada Post tracking number to verify service of the evidence which was sent to the Landlord's address on the Application. The Canada Post website shows the documents were received and signed for by a third party. The Landlord explained that the third party was the current renter of his property and that the Tenant should have sent them to the same address but with unit number "A".

The Landlord was informed that when he filed the Application he had not written his unit number as "A". Therefore, the Tenant had correctly served her evidence to the address the Landlord had detailed on his Application which was the same one on the tenancy agreement. Therefore, I allowed the Tenant to rely on her documentary evidence as this had been served to the Landlord pursuant to Section 89(1) (c) of the Act.

During the hearing, the parties also confirmed that the tenancy had ended and the Landlord had received vacant possession of the rental unit. Therefore, I dismissed the Landlord's Application for an Order of Possession as this was no longer required.

The Tenant confirmed that she had not provided the Landlord with a forwarding address at the end of the tenancy but acknowledged that she was residing at the address the Landlord had used to serve her with the Application. Accordingly, I dismissed the Landlord's Application for a Substituted Service Order to serve documents to the Tenant as the Tenant had been satisfactorily served pursuant to the Act.

Issue(s) to be Decided

- Is the Landlord entitled to lost rent due to the Tenant breaking the fixed term tenancy?
- Did the Landlord mitigate loss?
- Is the Landlord entitled to \$500.00 for alleged damage caused by the Tenant's cat?
- Can the Landlord keep the Tenant's security deposit?

Background and Evidence

The parties agreed that this tenancy started on June 1, 2016 and was set for a fixed term of one year due to expire on May 31, 2017. Monthly rent of \$1,000.00 was payable by the Tenant on the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00 which the Landlord still retains in trust.

At the start of the tenancy, the Landlord completed a move-in Condition Inspection report (the "CIR"). However, no move-out CIR was completed at the end of the tenancy.

The Landlord claims that because the Tenant broke the fixed term tenancy by vacating the rental unit on April 1, 2017, the Tenant owes \$2,000.00 for the loss of rent for the remaining two months of the fixed term tenancy.

The Landlord also seeks to retain the Tenant's security deposit for the loss of rent as well as for alleged damage caused by the Tenant's cat which she was prohibiting from having in the rental unit. The Landlord testified that the Tenant's cat had caused staining to the rental unit carpet which had to be remedied at a cost of \$500.00. The Landlord acknowledged that he had not provided a copy of the receipt showing the costs incurred by him to repair or replace the carpet.

The Tenant denied the Landlord's claim for damage to the carpet asserting that the cat she had at the rental unit was temporary and not permanent.

The Tenant explained that she had informed the Landlord in December 2016 by text message that she would be vacating the rental unit on February 1, 2017. The Tenant testified that due to the Landlord's outburst in which he expressed that he was not happy about this, the Tenant decided not to end the tenancy. However, In February 2017 the Tenant's circumstances were such that she could not stay at the rental unit any longer.

The Tenant testified that on or about February 24, 2017, she sent a letter to the Landlord by registered mail in which she detailed that the fixed term tenancy would be ending prematurely on April 1, 2017, which it did.

The Landlord acknowledged receipt of the Tenant's letter but stated that it had not been sent to him until April 13, 2017. The Landlord provided the Canada Post tracking number for the letter he stated he received from the Tenant which shows that it was indeed sent on April 13, 2017.

The Tenant rebutted this testifying that she had sent it in late February 2017 and questioned why she would send a letter on April 13, 2017 after the tenancy had finished on April 1, 2017. I gave the Tenant an opportunity to look for and search for the Canada Post tracking number to verify that the letter she wrote to the Landlord was sent on or around February 2017. However, the Tenant was unable to locate and find this.

The Tenant submitted that the Landlord had not mitigated loss by re-renting the rental unit for the last two months of the tenancy. The Tenant testified that when she text the Landlord in December 2016 to advise of the ending of the tenancy, she offered that her brother could take over the tenancy. The Tenant testified that in addition she had six people lined up to take over the tenancy. The Tenant submitted that the Landlord would not have had a problem re-renting the unit because the vacancy rate in the city was less than 1%.

The Landlord testified that he was out of town when the tenancy was ended by the Tenant and he did not have time to come back to the city and check references. The Landlord testified that he did advertise the rental unit on three different websites but acknowledged that he had not provided any supporting documents, such as advertisements, into evidence.

Analysis

Section 45(2) of the Act states 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.

Fixed term tenancies cannot be ended unilaterally by any party. In this case, it was undisputed by the parties that the Tenant had ended the fixed term tenancy prematurely. I find the tenancy was ended contrary to Section 45(2) of the Act and to the signed tenancy agreement.

Section 7(1) of the Act provides where a party breaches the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results. As the Tenant breached Section 45(2) of the Act, I find the Landlord would have been entitled to compensation as provided by the Act for the Tenant's breach.

However, Section 7(2) of the Act also states that a party making a claim for compensation for non-compliance of the Act, must do whatever is reasonable to minimise the damage or loss. Therefore, I must turn my mind to determine whether the Landlord pursued a reasonable course of action to mitigate his loss for the two months' rent he now claims.

In this case, the Tenant asserted that she had given the Landlord sufficient notice to end the tenancy for him to mitigate his loss in February 2017. However, the evidence before me was that the Tenant did not provide the Landlord with the notice to end tenancy until April 13, 2017 as supported by the Landlord's Canada Post evidence.

The Tenant was given opportunity both prior to and during the hearing to furnish evidence to prove when she had provided the Landlord with her written letter to end the tenancy. In this case, I am unable to rely on the disputed oral evidence of the parties alone. Therefore, I only able to conclude the Tenant failed to give sufficient notice to the Landlord until April 13, 2017 which would not have given sufficient time for the Landlord to have re-rented the rental unit for the rest of April 2017.

I reject the Landlord's oral evidence that he lost rent for May 2017. The Landlord provided no supporting or corroborating evidence that the rental unit had been

advertised for re-rental for May 2017. In addition, the Landlord would have been obligated under the Act to mitigate loss irrespective of whether he was a distant Landlord or not. Furthermore, the Tenant cannot be held liable for the Landlord's inability to be at the location and subsequently arrange for re-rental.

In this case, I balance the fact that the Tenant sought to end the tenancy prematurely by text message in December 2016 for February 1, 2017, but recanting that notice verbally by not leaving on February 1, 2017. It was only at this point had the Tenant offered the Landlord to re-rent the unit to her brother. Based on the evidence before me, I grant the Landlord his loss of rent for April 2017 of \$1,000.00 on the basis that the Tenant broke the fixed term tenancy and did not give sufficient time for the Landlord to re-rent out the unit for the remainder of that month.

The Landlord's claim for loss of May 2017 rent is denied because the Landlord failed to provide sufficient evidence that, in the time period he was notified of the ending of the tenancy in April 2017, he made attempts to mitigate that loss which I accept would have been easy in a rental market that had a such a low vacancy rate.

With respect to the Landlord's claim for damages to the carpet, I make the following findings. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, an Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. In this case, I find the Landlord has failed to meet the burden to prove his claim for damages to the rental unit.

The Landlord failed to complete a move-out CIR which would have evidenced the state of the rental unit at the end of the tenancy. In the absence of the CIR, the Landlord provided no other supporting or corroborating evidence, such as photographs, showing

the alleged damaged caused by the Tenant's pet which was disputed by the Tenant. In addition, the Landlord also failed to provide an invoice or estimate of the repair/replacement cost being claimed. For these reasons, I dismiss this portion of the Landlord's claim.

As the Landlord had to file this claim and was successful for a portion of it, I also award the Landlord his \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$1,100.00.

As the Landlord already holds the Tenant's \$500.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$600.00 which is payable by the Tenant forthwith.

This order must be served on the Tenant and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court. Copies of the order are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant breached the Act by ending the fixed term tenancy prematurely. However, the Landlord failed to mitigate all the loss being claimed. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$600.00 for April 2017 loss of rent and the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 13, 2017

Residential Tenancy Branch