



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MT, MNDC, MNSD, FF, O

Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities and more time to dispute the Notice, compensation for damage or loss under the Act, return of the security deposit and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord confirmed receipt of the hearing documents on September 25, 2017.

The landlord received the tenant's four pages of evidence and a USB on November 20, 2017. That evidence was not received at least 14 days prior to the hearing, as required by section 3.14 of the Residential Tenancy Branch Rules of Procedure.

The landlord submitted a considerable number of black and white photocopied photographs; they were not numbered. That evidence was duplicated on a USB which was served via registered mail and received by the tenant on the morning of this hearing. The landlord confirmed that the evidence was identical to that which will be submitted as part of an application being made by the landlord. A hearing date has yet to be set.

The tenant present at the hearing confirmed that only the male applicant signed the tenancy agreement. Therefore, I determined that the female applicant was an occupant. The female applicant confirmed attendance at the hearing as agent for the male application. The landlord confirmed that the male applicant was their tenant. I will refer to the agent as tenant.

The application was reviewed. The tenant has applied requesting compensation in the sum of \$2,500.00. The landlord said they had no idea what the claim represented. They assumed it might be related to property of the tenants'. Section 2.5 of the Rules of Procedure require an application to submit a detailed calculation of any monetary claim being made at the same time an application is made. The tenant has not set out a detailed calculation. The tenant said that the application was not fully completed and costs not fully assigned. Therefore, I determined that the monetary claim would be declined. The tenant has leave to reapply within the legislated time limit.

The tenant confirmed that they are not residing in the rental unit; the end of tenancy is in dispute.

I determined that the hearing would proceed in relation to the portion of the application requesting return of the security deposit. It was explained that a determination on the end of the tenancy would be required. The tenant did not object to my referencing a copy of the tenancy agreement and a 10 day Notice to end tenancy for unpaid rent contained in the landlords' evidence. The tenant had those documents for reference.

Issue(s) to be Decided

Must the landlord be ordered to return the security deposit to the tenant?

Background and Evidence

The tenancy commenced on March 8, 2017 as a fixed term ending in February 2018; converting to a month to month term. Rent was \$1,200.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$600.00.

The landlord stated that on September 22, 2017 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 22, 2017 was served by registered mail. The tenant received the Notice on September 13, 2017 and disputed the Notice two days later.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,200.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that September 2017 rent was not paid. The tenant thought that any eviction would be delayed as there were matters in dispute related to the tenancy. The tenant confirmed that the utilities were terminated and that they removed most of their property from the rental unit before the landlord changed the locks on September

25, 2017. The tenant said the landlord did not have the right to change the locks as the tenant continued to possess the unit.

The landlord confirmed that they are holding some property that belongs to the tenant. During the hearing the landlord agreed the tenant can call and arrange a time to retrieve those items.

The tenant confirmed that a written forwarding address has not been given to the landlord. It was explained to the tenant that before a claim requesting return of a deposit is made a tenant must provide a written forwarding address. General information was provided to the parties on return of a security deposit.

Analysis

I find that the tenant received the 10 day Notice ending tenancy for unpaid rent on September 13, 2017; the date the registered mail was received.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received this Notice on September 13, 2017, I find that the earliest effective date of the Notice is September 23, 2017.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to end tenancy was September 23, 2017.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on September 23, 2017.

Section 46(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice.

The tenant applied to dispute the Notice within five days of the Notice being issued. It was explained during the hearing that when a tenant disputes a Notice for unpaid rent the tenant must come to the hearing with evidence that in fact rent was paid. The tenant supplied no evidence of payment or of any expenditures for emergency repairs made by the tenant. The tenant may be confused about the process of eviction, but has confirmed that September, 2017 rent was not paid.

Section 46(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy ended on the effective date of the Notice; September 23, 2017.

As the tenant has yet to supply a written forwarding address; required by section 38(1)(b) of the Act, I find that the request for return of the security deposit is premature and dismissed with leave to reapply within the legislated time limit. Section 39 of the Act determines if a tenant fails to provide that written address within one year of the end of the tenancy the right of the tenant to return of the deposit is extinguished.

Conclusion

The tenancy ended effective September 23, 2017.

The application requesting return of the security deposit is dismissed with leave to reapply within the legislated time limit.

The monetary claim is declined. The tenant has leave to reapply.

This decision is final and binding and 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: December 04, 2017

Residential Tenancy Branch