



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$2400
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on January 9, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement dated May 31, 2017 that provided that the tenancy would start on June 15, 2017 and continue on a month to month basis. The rent was \$1200 per month payable in advance on 15th day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

On November 22, 2017 the landlord gave the Tenant a notice advising the tenancy would end on January 21, 2018. At the end of November the tenant gave the landlord

notice she was ending the tenancy on December 15, 2017. The Tenant vacated the rental unit and the tenancy ended on December 15, 2017.

The tenant(s) testified she provided the landlord with her their forwarding address in the form of a letter dated December 16, 2017. The landlord disputes the testimony of the Tenant. He testified the first time he saw the letter was when it accompanied the Application for Dispute Resolution which he received around the middle of January and he alleged the Tenant backdated this letter.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$600 on June 15, 2017. I determined the tenancy ended on December 15, 2017. I further determined the tenant provided the landlord with her forwarding address in writing on December 16, 2017. I determined the landlord failed to provide sufficient evidence to dispute this testimony of the tenant.

Further the landlord testified he received the December 16, 2017 letter which contained the Tenant's forwarding address with the Tenant's Application for Dispute Resolution. While the landlord provided evidence alleging the tenant failed to sufficiently clean the rental unit and caused damage, the landlord has not filed a claim with the Residential Tenancy Branch as the Act requires as of the date of this hearing. Further, the landlord failed to provide sufficient evidence to establish that the tenant failed to attend an final inspection or that he gave the tenant Notices of a proposed inspection.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenant has established a claim against the landlord for double the security deposit or the sum of \$1200.

The landlord retains the right to file an Application for Dispute Resolution seeking a monetary order for alleged damages and the failure to clean. However, he must first file this Application before his claims can be considered by an arbitrator.

The tenant seeks an order for the equivalent of one month rent because she was served with a 60 notice. Section 51(1) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

On November 22, 2017 the landlord gave the tenant a typed notice stating the tenant must vacate by January 21, 2018. This notice alleged the landlord had cause to end the tenancy. The Notice was not in the approved form and was not given under section 49 of the Act (which is for landlord's use of the property). As the Notice was not in the approved government form the tenant could have applied for an order to cancel the Notice. The Tenant decided not to make such an Application. I determined that the tenant is not entitled to the equivalent of one month rent as the Notice was not brought a Notice under section 49 as required by the Act and it was not in the approved government form which is necessary to be effective under that section. As a result I dismissed the Tenant's application for the equivalent of one month rent. .

Monetary Order and Cost of Filing fee

In summary I ordered the landlord(s) to pay to the tenant the sum of \$1200 plus the sum of \$100 in respect of the filing fee for a total of \$1300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: March 06, 2018

Residential Tenancy Branch