



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant were both present for the duration of the teleconference hearing. Neither party brought up any concerns regarding service of the Notice of Dispute Resolution package or the exchange of evidence.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 Matter

The Application for Dispute Resolution named two parties as Tenants. However, during the hearing, the parties clarified that only one tenant began the tenancy and a second occupant moved into the rental unit at a later date.

Although the parties were not in agreement as to whether a written tenancy agreement was signed at the beginning of the tenancy, they were in agreement that the second Applicant did not have a signed agreement. As such, the Application was amended to remove the second Applicant, who was not present at the hearing.

This amendment was made in accordance with Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 1, 2017 and the keys were returned to the Landlord on May 7, 2018. Monthly rent was originally \$750.00 and was \$800.00 at the end of the tenancy due to an additional occupant residing in the rental unit. A security deposit of \$300.00 was paid at the outset of the tenancy and has been returned to the Tenant.

The Tenant testified that on April 28, 2018, he provided notice to the Landlord that he would be moving out and May 2018 would be his last month in the rental unit. He stated that on May 2, 2018 he received a text message from the Landlord asking if he has already moved out. The text message exchange was submitted into evidence.

In the text message exchange dated May 2, 2018, the Landlord stated that if the rental unit was cleaned up for May 15, 2018, she could try to rent the unit out beginning on the May 15, and may be able to give the Tenant half a month's rent back.

The Tenant replied by stating that he needed to come back for a few belongings and to clean and that he would try to be done by May 15, 2018. He testified that he returned the keys to the Landlord on May 7, 2018.

The Tenant stated that he was unaware that the Landlord had re-rented the unit until he returned to collect mail and stay in the rental unit while he was in town. It was at that time that he realized there was a new tenant residing there.

The Landlord provided testimony that she was not aware that the Tenant was planning on staying in the rental unit after returning the key to her. On May 20, 2018 the Tenant sent a text message to the Landlord asking if he would get half a month of rent returned

since there was a new tenant in the rental unit. The Landlord responded by stating that the new tenant did not pay any rent for May 2018, only the security deposit. The Landlord testified that the new tenant was to begin paying rent on June 1, 2018. The Landlord submitted the new tenancy agreement into evidence showing that the agreement began on June 1, 2018.

On June 4, 2018, the Tenant served the Landlord with a letter requesting the return of half of May's rent. The letter was given to the Landlord in person by a friend of the Tenant's. The letter provided until June 8, 2018 for the Landlord to return half of the rent for May 2018 to him.

The Landlord responded to the letter in a text message in which she stated that there was no written agreement regarding half of May's rent and that she had advised the Tenant that she would try to have a new tenant in May. The Landlord testified that she allowed the new tenant to move in early without paying which was her choice and she was not aware that the Tenant was expecting to stay at the rental unit again.

Analysis

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

The Tenant provided one month of notice to vacate the rental unit in accordance with Section 45(1) of the *Act*. With the notice given on April 28, 2018, the tenancy was set to end on May 31, 2018 and the Tenant would be responsible for rent for May 2018.

As the Tenant paid rent for May 2018, I find that they would have access to the rental unit for the remainder of May 2018. However, based on a text message from the Landlord on May 2, 2018 in which she suggested she may be able to re-rent the unit earlier and return some of the Tenant's rent, the Tenant took steps to ensure he was out of the rental unit by May 15, 2018, with an actual move-out date of May 7, 2018.

After May 7, 2018, the Landlord allowed a new tenant to move-in early and not pay rent for the remainder of May 2018. Although the tenancy agreement for the new tenant began on June 1, 2018, the Landlord was in agreement that the new tenant moved in during May 2018.

I find that the decision to not charge the new tenant partial rent for May 2018 was the Landlord's decision. However, as the Landlord had already received rent for May 2018 from the previous Tenant, she did not experience a loss of rental income.

The Tenant may have continued to access the rental unit throughout May 2018 and return the key on May 31, 2018 had it not been suggested that he might get some rental money back if he could move out by May 15, 2018. I find that the Tenant vacated the rental unit early based on the possibility of the rental unit being re-rented for the last two weeks of May with that amount being returned to the Tenant. As the rental unit was re-rented, I find that the Tenant is entitled to the return of half of May 2018 rent in the amount of \$400.00, pursuant to Section 67 of the *Act*.

As the Tenant was successful in their application, I also award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00, pursuant to Section 72 of the *Act*.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$500.00** for the return of half of the rent paid for May 2018 and the recovery of the filing fee for this application. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: September 11, 2018

Residential Tenancy Branch