



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNDCL-S, MNRL-S

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1408.08 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. 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 and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on July 24, 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 landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 29, 2017, end on June 30, 2018 and become month to month after that. The tenancy agreement provided that the tenant(s) would

pay rent of \$1150 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$525 and a pet damage deposit of \$525 for a total of \$1150..

In early June 2018 the tenant gave written notice she was ending the tenancy on July 15, 2018. The notice was addressed to the principals of the landlord and not the corporation. The notice was not signed and did not comply with the Act. The landlord responded stating that the Notice to End Tenancy was insufficient. The tenant subsequently wrote a letter dated June 18, 2018 stating she was ending the tenancy by July 1, 2018 for the failure to comply with a material term. The landlord testified that they did not receive this letter. A second letter was written dated June 25, 2018 stating the tenant was ending the tenancy for because of a breach of a material term. The breaches include the failure to fix a leak in a timely way and the front door does not close. The tenant testified she feared for her safety.

The tenant testified she was not longer living in the rental unit by June 17, 2018. Her belongings were removed by the end of June. The parties conducted a Condition Inspection on July 6, 2018.

Landlord's Application - Analysis

Section 45(3) of the Act provides as follows:

Tenant's notice

45 (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 determined the Tenant failed to sufficiently end the tenancy under section 43(3) for the following reasons:

- The Notice does not give the landlord a reasonable period of time to correct any failure.
- At all material times the landlord was present and was making repairs to the rental unit. I am satisfied had the Notice given the landlord a reasonable period of time to correct the failure, the repairs would have been made.

As a result I determined the tenancy ended on June 30, 2018 when it was apparent to both parties the tenant vacated.

Normally a landlord would be entitled to the loss of rent for the subsequent month as a result of the Tenant's failure to give sufficient notice. However, section 7(2) of the Act provides as follows:

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss..

The landlord failed to present sufficient evidence that they acted reasonable minimize the loss. The landlord failed to present sufficient evidence as to their efforts to re-rent the rental unit. The landlord acknowledged there was a problem with the trailer settling and that they spent a couple of weeks putting the trailer on blocks to stop the settling. This problem was not caused by the tenant. The landlord cannot claim damages against the tenant for loss of rent when the rental unit was not in a condition that they could rent it. In the circumstances I determined the landlord is entitled to ½ of a month rent or the sum of \$575. I dismissed the claim for a late fee as the tenancy ended on June 30, 2018.

I determined the landlord is entitled to \$180.08 (the amount set out the monetary order worksheet) for the cost of the water bill with the City. The tenant acknowledged responsibility for this claim.

I determined the landlord is entitled to \$87.50 and \$37.50 for the cost of cleaning. The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. I determined the tenant failed to sufficiently clean the rental unit upon vacating. .

Monetary Order and Cost of Filing fee

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$880.08 plus the \$100 filing fee for a total of \$980.08.

Security Deposit/Pet Damage Deposit

I determined the security deposit/pet damage deposit totals the sum of \$1150. I determined the landlord is entitled to retain the sum of \$980.08 from the security deposit/pet damage deposit. I ordered the landlord pay to the Tenant the balance of the security deposit/pet damage deposit in the sum of \$169.92.

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

Should the applicant 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 the 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: October 26, 2018

Residential Tenancy Branch