



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 of the *Residential Tenancy Act* ("the *Act*").

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant had an advocate present as well to assist with oral evidence submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package were served to the landlord by way of registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with these documents.

The landlord confirmed that he did not submit evidence to the Residential Tenancy Branch or to the tenant.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant gave written evidence that this tenancy began on September 01, 2017, with a monthly rent of \$680.00, due on the first day of each month.

In addition to the above the tenant also submitted:

- A Monetary Order Worksheet showing the tenant's monetary claim of \$355.56 comprising of \$15.56 for registered mail and rent from April 15 to April 30, 2018 in the amount of \$340.00;
- A copy of a bank statement showing the monthly rent being paid for April 2018 in the amount of 680.00;
- A series of e-mail exchanges between the landlord and the tenant regarding a potential occupant for the rental unit coming to view it on or around April 13, 2018, and the landlord indicating that the potential occupant is not interested. The landlord also states that they will return the tenant's security deposit; and
- A series of e-mail exchanges between the tenant and the landlord's agent regarding a new occupant in the rental unit or around April 20, 2018, the tenant expressing discontent about paying for this new occupant's rent and telling the agent that the landlord told her he has a right to keep the tenant's rent for April 2018.

The tenant's advocate (advocate) submitted that the tenant had given notice to the landlord in March 2018 to vacate the rental unit for April 30, 2018. The advocate stated that the tenant had a new place secured and the rental unit cleaned out by April 12, 2018. The advocate indicated that the tenant had given the key to the landlord's agent for him to show the rental unit to potential occupants.

The advocate submitted that the landlord gave the rental unit to another occupant shortly after the tenant moved out of the rental unit in the middle of April 2018. The advocate maintained that the tenant had considered the rental unit to be hers and should have had possession of it until the end of the month as she had paid the full month's rent for April 2018. The advocate stated that the tenant should receive half a month's rent back from the landlord as they gave the tenant's unit to another occupant when the tenant still had legal possession of it.

The tenant testified that she gave verbal notice on the phone to the landlord in March 2018 of her intention to move out of the rental unit for April 30, 2018.

The landlord stated that he did not receive notice that the tenant was moving out until April 2018 and that the tenant moved out early on April 12, 2018. The landlord submitted that on or around April 18, 2018, they had another party who asked to move into the rental unit. The landlord stated that, since the tenant was not living there anymore and had all of her possessions out, they did not see any problem. The landlord maintained that they did not collect any rent for the new occupant moving into the rental unit for April 2018.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act, Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 45 of the *Act* establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement

Having reviewed all documentary evidence and affirmed testimony, I find that the tenant has not demonstrated that they have suffered any damage or loss due to the violation or neglect of the *Act*, regulations or tenancy agreement by the landlord.

I find that, whether the tenant gave their notice to end tenancy in March 2018 or April 2018, they would have been responsible to pay for the full monthly rent for April 2018, in accordance with sections 26 and 45 of the *Act*. As there is no written evidence of the notice to end tenancy, I find that I am not actually able to determine when written notice was given as the text message exchanges provided by the tenant only commence in April 2018; however, it does not impact the tenant's obligation under the *Act* to pay the full monthly rent for April 2018 pursuant to section 45 of the *Act*.

Section 44 (1)(d) of the *Act* states that a tenancy ends when a tenant vacates the rental unit. Section 37 (2) of the *Act* establishes when a tenant vacates the rental unit they must leave the rental unit reasonably clean, and undamaged except for unreasonable wear and tear, and give the landlord all the keys or other means of access that are in

possession or control of the tenant and that allow access to and within the residential property.

I find that the tenant gave the landlord's agent the keys to the rental unit after the landlord's agent assisted the tenant in leaving the rental unit reasonably clean and that the tenant vacated the rental unit on April 12, 2018. I find that there is no evidence that the tenant was using the rental unit for storage or any for other purpose and the tenant has not demonstrated that they have incurred any loss under the Act. I find that an occupant being in the rental unit did not cause the tenant a loss under the Act. Although there is no evidence that the landlord received any money from the occupant for the two weeks of occupancy in the rental unit, I find that it is irrelevant as it did not change the tenant's obligation to pay the monthly rent for April 2018 pursuant to sections 26 and 45 of the Act.

For the above reasons, I find that the tenant has failed to prove that they have suffered a loss due to the actions of the landlord in violation of the *Act*, regulations or the tenancy agreement. Therefore, the tenants' Application for a monetary award is dismissed, without leave to reapply.

Conclusion

The tenants' Application is dismissed, without leave to reapply.

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 05, 2018

Residential Tenancy Branch