



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and the tenant was accompanied by an agent. The landlord and the tenant's agent each gave affirmed testimony and were given the opportunity to question each other and give submissions.

During the course of the hearing, the tenant's agent submitted that not all of the landlord's evidentiary material had been provided to the tenant. The evidence in question is a note allegedly signed by other tenants in the rental complex. The landlord submitted that the tenants did not wish to be identified and therefore the landlord did not provide that document to the tenant.

Any evidence that a party wishes to rely on must be provided to the other party. Since the landlord has not provided a copy of it to the tenant, I decline to consider it.

No other issues with respect to service or delivery of documents or evidence were raised, and all other evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on February 1, 2018 and was to expire on July 31, 2018, however the tenancy ultimately ended on June 30, 2018. Rent in the amount of \$1,100.00 per month was payable on the 1st day of each month, and there are no rental arrears to the end of June, 2018. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in an apartment complex, and the landlord is the manager of the complex and also resides in the complex. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant had sub-let the apartment to other people, and did not live in the rental unit. The sub-tenant called the landlord and said there were bed bugs in the rental unit, and then showed one to the landlord, so an exterminator was called. The landlord believes the tenant or sub-tenants brought in the bedbugs.

The sub-tenant moved out, not being happy, but the landlord is not certain when. The landlord did not agree to end the tenancy early, however the parties exchanged text messages, and the landlord said that the tenant could give written notice. However, the landlord could not re-rent due to the bed bugs. The landlord had the rental unit treated again for the bugs after the tenancy ended, and had to wait 2 weeks according to the exterminator, and therefore was not able to re-rent until August 1, 2018.

The landlord received a letter from the tenant, but does not recall when, dated July 3, 2018 and a copy has been provided for this hearing. It requests return of the security deposit and contains a forwarding address of the tenant. It may have been received via registered mail.

The landlord claims loss of rental revenue for the month of July, 2018 in the amount of \$1,100.00 as well as the costs of the treatments in the amount of \$210.00, and a copy of the Invoice dated May 19, 2018 from the Pest Control Agent in the amount of \$210.00 has been provided as evidence for this hearing.

The tenant's agent testified that the landlord initially breached the tenancy agreement. The tenancy was to commence on February 1, 2018, however the previous tenant hadn't moved out, but the landlord kept the tenant's security deposit. The tenant moved in on March 1, 2018 and had to pay for a U-Haul twice and stayed with friends or family until then.

The tenant has provided Witness Statements, one of which states that on May 19, 2018 the landlord told the writer, who is a tenant in the rental complex, to tell the tenant to move out ASAP. The tenant asked the landlord by text message what to do to move out early, and the landlord replied, "Give one month notice before May 31." The landlord again texted the tenant stating, "Thank you. Give your notice. I'll be happy you move out."

The tenant disagrees that there were not issues of bed bugs previously, and has provided a statement dated September 8, 2018 from a person who is apparently a tenant in the rental complex. It states that the building, including the writer's apartment, has struggled with different types of pests, and that prior to the tenant moving into the building, the writer heard on multiple occurrences from other neighbours that they had suffered from bed bugs.

Analysis

Any reference to the landlord's breach of the tenancy agreement by not having a rental unit ready to move into as initially promised is not relevant to this hearing. The application before me is from the landlord claiming loss of rental revenue and damages resulting from bed bugs. The landlord feels the tenant is responsible for the pests and for ending the tenancy earlier than the fixed term.

In order to be successful in a claim for damage or loss, the onus is on the landlord to establish that the tenant is responsible for the bed bugs, and I see no evidence of that. Pests are the responsibility of the landlord; to provide safe and suitable housing. Unless the landlord has clear evidence that the tenant or sub-tenants somehow introduced bed bugs into the rental complex, the landlord cannot claim that the tenant is responsible. Since the landlord has not done so, the landlord's application for recovery of the amount of the pest control invoice must be dismissed.

With respect to loss of rental revenue, the *Residential Tenancy Act* states as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

In respect of a tenant's notice to end a tenancy:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(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.

In this case, subsection (2) applies, meaning that the tenant can give a month's notice to end the tenancy but it can't be effective earlier than the end of the fixed term. However, the parties can agree in writing to end the tenancy earlier under subsection 44(1)(c) above.

Whether or not the landlord told other tenants that he wanted the tenant out ASAP, the question before me is whether or not the parties agreed in writing. The landlord told the tenant in a text message that he would be happy if she moved out early, and the tenant asked how to do that. The landlord replied to give a month's notice prior to May 31, 2018, and the tenant complied. As a result, I am not satisfied that the landlord mitigated any loss of rental revenue.

Also, given that the landlord has not established that the tenant or sub-tenants were responsible for the pests, I also find that the landlord has not established that any loss of rental revenue was caused by the tenants, and the landlord's application is dismissed.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

The landlord currently holds a security deposit in trust on behalf of the tenant in the amount of \$550.00. I order that the landlord return it to the tenant, and I grant a monetary order in favour of the tenant as against the landlord in the amount of \$550.00.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$550.00.

This order is final and binding and may be enforced.

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 30, 2018

Residential Tenancy Branch