



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

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 the Amendment to an Application for Dispute Resolution (the Amendment). In accordance with section 89 of the *Act*, I find that the landlord is duly served with the Application and the Amendment.

The landlord also acknowledged receipt of the tenant's evidence which was served to him by e-mail. I find that the landlord is duly served with the tenant's evidence pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find documents sufficiently served for the purposes of the *Act*.

The tenant acknowledged receipt of the landlord's evidentiary package. In accordance with section 88 of the Act, I find that the tenant is duly served with the landlord's evidence.

Preliminary Matter

At the outset of the hearing the tenant testified that they have moved out of the rental unit and were no longer disputing the One Month Notice. The tenant submitted that they were still seeking compensation.

The landlord confirmed that the tenant moved out of the rental unit and that they have possession.

As this tenancy is now over, I dismiss the tenant's Application to dispute the One Month Notice and for the landlord to comply with the Act, without leave to reapply.

I will now consider the tenant's monetary claim.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant and landlord agreed that this tenancy began on August 01, 2018, with a monthly rent of \$800.00, due on the first day of each month. The tenant and landlord agreed that the landlord retains the security deposit in the amount of \$400.00 and that the landlord sent the tenant this amount by electronic transfer, with the tenant refused to accept.

The tenant provided in evidence:

- A copy of the internet advertisement for the rental unit which shows that the landlord would allow a small dog;
- A copy of a receipt of payment for \$2,000.00 which is comprised of two months' rent and the security deposit that was paid to the landlord on July 24, 2018;
- A copy of an e-mail dated October 29, 2018, from the landlord to the tenant in which the landlord informs the tenant that they will be serving a One Month Notice to the tenant later that evening;

- A copy of the landlord's October 25, 2018, One Month Notice in which the landlord has cited that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security safety or physical well-being of another occupant of the residential property, among other reasons checked off; and
- A copy of a Monetary Order Worksheet which shows the tenant's monetary claim of \$2,900.00 as comprising of the rent in the amount of \$800.00 for three months, the security deposit and the filing fee.

The landlord provided in evidence:

- Copies of text messages exchanged between the landlord and the tenant regarding the tenant not moving into the rental unit for August/September 2018 and then paying for October 2018 rent, the tenant moving in and then after some discussion the tenant states that they have moved out for November 01, 2018, due to not being able to have their dog with them;
- A copy of a letter from an occupant of the rental unit stating that they asked the landlord to evict the tenant and that another occupant moved out of the rental unit due to the tenant's actions; and
- A copy of a letter from the landlord giving details of the tenancy which commenced on August 01, 2018, but that the tenant did not move into the rental unit until October 22 or 23 2018, at which time the landlord realized that the tenancy was not a fit for the other occupants due to behaviour and allergies to dogs which led to the landlord serving a One Month Notice and the tenant moving out of the unit before the effective date of the One Month Notice. The landlord states in this letter that they have sent the tenant her damage deposit by electronic funds transfer but that the tenant has not accepted it despite being given the password to access it by the landlord.

The tenant submitted that they signed a lease with the landlord for the rental unit and paid for August 2018 and September 2018 so that they could secure a place for themselves when they planned to attend school. The tenant stated that she was not in the rental unit for 24 hours before being notified that one of the occupants had a dog allergy and that the landlord did not realize she had a dog. The tenant testified that the advertisement, as provided in evidence, shows that a small dog was permitted and that her dog was with her when she initially met the landlord. The tenant stated that almost immediately upon moving into the rental unit, she was asked to move due to the dog and then due to the landlord moving back into the rental unit and then she was provided a One Month Notice for other reasons.

The landlord stated that the tenant was not evicted for the dog or for the landlord moving into the rental unit but because she adversely affected the quiet enjoyment of other occupants by not moving into the rental unit at the beginning of the tenancy, showing up unannounced with another gentleman and making demands of the other occupants. The landlord stated that he fulfilled his part of the tenancy agreement by providing her a place to stay as per the agreement that was signed but that after giving the One Month Notice, the tenant moved out of their own volition.

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 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Having reviewed the evidence and affirmed testimony, I find that the tenant entered into a tenancy agreement with the landlord and that the landlord provided the rental unit as per the agreement between the parties. I find that the landlord did not violate the Act, Regulations or tenancy agreement as the room was available for the tenant to move into as of August 1, 2018, even though the tenant did not move in until sometime near the end of the October of their own volition.

I find that the landlord was in their right, pursuant to section 47 of the Act, to serve a One Month Notice to the tenant if they had cause to do so. I find that the tenant had the right, pursuant to section 47 of the Act, to dispute the One Month Notice or accept it. Although the tenant initially disputed the One month Notice, I find that it is undisputed that the tenant moved out of the rental unit of their own volition and not due to any violation of the Act, Regulations or tenancy agreement by the landlord as they did not force her to leave before the effective date of the One Month Notice.

For the above reasons I find that the tenant has not incurred a loss due to the actions or neglect of the landlord in violation of the Act, Regulations or tenancy agreement. Therefore, I dismiss the tenant's Application for compensation for damage or loss under the *Act*, regulation or tenancy agreement for the refund of three months' rent, without leave to reapply.

I find that it is the tenant's responsibility to accept the electronic transfer of the security deposit or to request that it be sent again if no longer available. As the status of the electronic funds transfer of the security deposit is unknown, I make no findings regarding it.

As the tenant was not successful in their Application, I dismiss their request to recover the filing fee from the landlord, without leave to reapply.

Conclusion

The tenant's Application, other than for the return of the security deposit, is dismissed in its entirety without leave to reapply.

I make no findings regarding the security deposit.

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: December 19, 2018

Residential Tenancy Branch