



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 8, 2018, the Tenant requested monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 21, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was represented by an agent, G.R. and the Landlord appeared on his own behalf. Although the Tenant also had a witness available to testify, they were excluded from the hearing, and I determined that their testimony was not required.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant's advocate was not able to testify as to when the tenancy began.

In the details of dispute section on the Application, the Tenant wrote that she gave notice to end her tenancy on June 11, 2018 with an intended move out date of June 28, 2018. As she did not give 30 days' notice she paid rent for July in the amount of \$900.00. The Tenant further wrote that she moved out on June 28, 2018 after which the Landlord took possession of the rental unit and did a full renovation.

The Tenant sought return of the \$900.00 paid for July 2018 alleging the Landlord took possession of the rental unit prior to the tenancy ending.

The Tenant's advocate submitted that as the Tenant did not return her keys, the tenancy did not end until July 31, 2018.

Introduced in evidence were copies of Notice(s) of Entry for various dates in July 2018. These notices confirm the Landlord gave the Tenant details of the time and purpose of his entry during the month of July 2018.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

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.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

I therefore find the effective date of the Tenant's notice to end tenancy to be July 31, 2018. As such I also find that the Tenant was responsible for paying rent until July 31, 2018 such that the Landlord is entitled to the \$900.00 paid by the Tenant.

The evidence confirms the Tenant vacated the rental unit prior to the effective date of her notice to end her tenancy. As such, I find the Tenant gave up possession of the rental unit when she vacated on June 28, 2018. Although this allowed the Landlord to undertake repairs and renovations to the rental unit, it does not negate the Tenant's obligation to pay rent for July 2018. Further, while this was a benefit to the Landlord, I

am unable to find a corresponding loss to the Tenant and hence find the Tenant is not entitled to recover the rent paid for this time period.

I therefore dismiss the Tenant's claim for return of the \$900.00 paid for July 2018. Having been unsuccessful in her claim, I also find that she is not entitled to recover the filing fee.

Conclusion

The Tenant's claim is dismissed.

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 21, 2018

Residential Tenancy Branch