



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARC MCLEAN TOWNHOMES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

On October 7, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package and evidence to the Landlord by registered mail within three days of the package being ready and the Landlord confirmed that this package was received. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that he served his evidence to the Tenant by regular mail over three months ago and the Tenant confirmed receipt of this package as well. This evidence was served within the timing requirements in accordance with Rule 3.15 of the Rules of Procedure. As such, I am satisfied that the Tenant was sufficiently served with the Landlord’s evidence and this evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that tenancy started on August 1, 2015. Rent was established at \$1,650.00 per month and was due on the first of each month. A security deposit of \$825.00 and a pet damage deposit of \$825.00 were also paid.

The Tenant advised that he gave the Landlord written notice to end his tenancy on or around "May 16, 2018" and that he would vacate the rental unit on July 16, 2018. He stated that he agreed to participate in a move-out inspection with the Landlord on July 16, 2018 but was unable to, so it was delayed to July 17, 2018. The Tenant advised that it was his belief that the Landlord was required by statute to conduct a move-out inspection at the end of tenancy. As the move-out inspection report was conducted on July 17, 2018, he should be entitled to compensation for the balance of the month's rent. Alternatively, the Landlord should have conducted the move-out inspection on July 31, 2018. He also stated that he did not have any written agreement from the Landlord that he would only be responsible for rent in July 2018 for the days that he occupied the rental unit.

The Landlord submitted a "Notice of End of Tenancy Agreement by Tenant" into documentary evidence. The Tenant signed this form ending his month to month tenancy on June 12, 2018 and indicated that he would be vacating the rental unit on July 16, 2018. As well, the Landlord submitted a letter dated June 28, 2018 advising the Tenant that while he was willingly giving up vacant possession of the rental unit on July 16, 2018, he was still responsible for the entirety of July 2018 rent. Furthermore, a move-out inspection was coordinated for July 16, 2018.

The Landlord confirmed that the move-out inspection could not be conducted as the Tenant was not prepared to vacate, so they agreed to complete the move-out inspection report on July 17, 2018. The Landlord reiterated that the Tenant must give one, whole

month's notice to end his tenancy, that he is responsible for the entire month's rent, and that the Tenant gave up vacant possession when he returned the keys on July 17, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 35 of the *Act* stipulates that the Landlord and Tenant must inspect the rental unit before a new tenant begins to occupy the rental unit, on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day.

Section 44(d) of the *Act* states that the tenancy is determined to have ended when the Tenant vacates the rental unit.

Section 45 of the *Act* requires a Tenant in a month to month tenancy to give 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.

When reviewing the totality of the evidence before me, the undisputed evidence is that rent was due on the first of each month and that the Tenant gave his written notice to end his tenancy on June 12, 2018. As per the *Act*, the earliest this notice could have been effective would have been July 31, 2018 and the Tenant would be responsible for the entire month's rent.

Furthermore, the undisputed evidence is that it was the Tenant's choice to give up vacant possession of the rental unit on July 17, 2018 when he did not have to. Moreover, he could have requested a move-out inspection report for July 31, 2018 if he wished to retain possession of the rental unit until the end of July 2018, but it was his choice to participate in a move-out inspection with the Landlord and return the keys that day.

As the Tenant was obligated to pay July 2018 rent in full, as he did not have the Landlord's written consent to be compensated for vacating early, and as he willingly gave up vacant possession of the rental unit before the effective date of the notice and

participated in the move-out inspection, I do not find that that the Tenant has established justification for the compensation that he is seeking.

As the Tenant was unsuccessful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application 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: February 4, 2019

Residential Tenancy Branch