



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDCT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$900

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on April 10, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence:

On March 27, 2019 the tenant viewed the rental unit and decided that he wished to rent it. He gave the landlord \$300 for a security deposit and \$600 for the first month rent. The tenant returned on March 31, 2019 and was given the key by the landlord. The landlord told the tenant that she was having a problem with the flushing of the toilet and that he would not be allowed to put the used toilet paper down the toilet but instead he was to put it in a can covered bucket and the landlord would dispose of it.

The tenant returned the next day with his mother. At this time his mother told the landlord this was totally unacceptable and that the tenant could not live that way. The discussion deteriorated and spiralled out of control. The landlord asked if the tenant intended to move in and if not he should return the key. The tenant decided he was not going to move in and the key was returned.

The landlord returned the security deposit to the tenant within 15 days of the end of the tenancy.

The tenant seeks the return of the \$600 rent for April which he paid on March 27, 2019. The landlord testified that she was not able to rent the rental unit for April and lost one month rent. She testified she started advertising immediately. One prospective tenant was prepared to move in for the last 2 weeks of April. However the landlord testified she wasn't comfortable with that person. Eventually a prospective tenant entered into a tenancy agreement on April 17, 2019 to take possession on May 1, 2019.

The landlord testified the rental property is old. She subsequently hired a plumber who cleared the blockage in the pipes (caused by the previous tenant) and now the toilet is fully functional.

Law

I determined there was an oral tenancy as the tenant paid the landlord a security deposit and the first months rent.

Residential Tenancy Act provides that with a month to month tenancy the parties may end a tenancy by mutual agreement, by abandonment or a tenant may giving the landlord one clear month written notice. There is a further provision which is found in section 45(3) of the Act which provides as follows:

Tenant's notice

45 (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 the parties did not mutually agree to end the tenancy and tenant failed to give one month written notice. Further, the tenant failed to prove that the landlord breached a material term of the tenancy agreement. While the use of a bucket for used toilet may be extremely unpleasant it does not amount to the breach of a material term. Further, the tenant failed to give the landlord written notice of the alleged breach of a material term and a reasonable period to correct the situation.

I determined the tenancy ended by abandonment and that the landlord had the legal right to keep the rent money that was paid subject to the landlord's obligation to act reasonably to lessen her loss.

I find that landlord failed to act reasonably to lessen her loss. The landlord failed to provide documentary proof of her efforts to advertise and her efforts to re-rent. Further, according to the landlord's evidence she had a prospective tenant who was prepared to move in for the last two weeks of April but she decided not to rent the rental unit to that person. She failed to provide an adequate explanation as to why that prospective tenant was not acceptable. Eventually on April 17, 2019 she rented the rental unit to a new tenant who moved in on May 1, 2109.

In the circumstances I determined that the landlord is entitled to retain half of the rent for the loss for the period April 1, 2019 to April 15, 2019. I determined the tenant is entitled to recover the balance as the landlord failed to prove that she sufficiently mitigated her loss.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I dismissed the tenant's claim for the security deposit as it was returned with 15 days of the end of the tenancy. I ordered that the landlord to pay to the tenant the sum of \$300 in satisfaction of this claim.

This decision is final and binding on both parties.

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: June 19, 2019

Residential Tenancy Branch