



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 1, 2016. Rent of \$1,560.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. On May 15, 2019 the Landlord gave the Tenant a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The effective date set out on the Notice is June 30, 2019. The Tenant did not dispute the Notice and moved out of the unit on May 30, 2019. No rent was paid for June 2019.

The Landlord claims unpaid rent or lost rental income for June 2019 of \$1,560.00. The Landlord states that the Tenant only told the Landlord on May 27, 2019 that the Tenant would move out by May 31, 2019. The Landlord states that this was insufficient time to find another tenant and argues that the Tenant should have given the Landlord a written one month notice to end the tenancy. The Landlord states that an email was sent to the Tenant on May 27, 2019 with the understanding that the Tenant would still be liable for rent for June 2019. The Landlord argues that the lack of response to this email indicates the Tenant's agreement with the Landlord's understanding that rent for June 2019 would be paid.

The Tenant's representative (the "Representative") states that the Tenant, an aged person, was in the hospital at the time the Notice was served. The Representative states that since the Notice dealt with fire safety concerns with the Tenant, the Tenant's cognitive abilities were tested in the hospital and the Tenant passed the tests. The Representative states that since there were safety concerns with the Tenant being in the unit, the Rep informed the hospital staff and the Tenant could not return to the unit. The Representative states that there was little time to act given the effective date of the Notice. The Representative states that by luck a care home was found for the Tenant at an affordable rate and that as such openings are rare the Representative immediately paid the deposit on the care home unit for the Tenant to move in June 1, 2019. The Representative states that the Tenant did not have funds to pay for rent in two places and that nothing else could be done in the circumstances. The Representative states that that was never any agreement or shared understanding that the Tenant would pay for June 2019 rent. The Representative states further that the Landlord informed the Representative at the move-out inspection that the unit would be painted before the next tenancy. The Representative argues that this caused the delay in re-renting the unit. The Representative denies that the Landlord is entitled to any rent or lost rental income.

The Landlord states that the unit was advertised online on May 27, 2019 at the same rental rate and that this advertisement only produced prospective tenants for a July 1, 2019 tenancy start. The Landlord denies informing the Tenant that the unit would be painted and states that the Landlord was happy for the Tenant to reside in the unit until the end of June 2019. The Landlord argues that the Tenant's rush to secure alternate housing is not an excuse for not paying June 2019 rent.

Analysis

Section 44(1) of the Act provides that a tenancy ends where, inter alia, the tenant vacates or abandons the rental unit. Rent is no longer payable after a tenancy ends. Based on the undisputed evidence that the Tenant moved out of the unit on May 30, 2019 I find that the tenancy ended on that date and that no further rent is payable. I dismiss the claim for unpaid rent.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 47(5) of the Act provides that if a tenant who has received a notice under this section does not make an application for dispute resolution to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. There is nothing in the Act that requires a tenant to give notice to end a tenancy where a landlord has already given a notice to end the tenancy. Based on the undisputed evidence that the Landlord served the Tenant with a one month notice to end tenancy for cause and given the effective date of June 30, 2019 I find that the Tenant had until that date to move out of the unit. As the Tenant moved out of the unit by the effective date of the notice and in accordance with the Act, I find that the Landlord has not substantiated that the Tenant breached the Notice or the provisions of the Act in relation to that Notice.

As there is no evidence of any other breach, I find that the Landlord has no basis to claim any loss from a breach by the Tenant. I dismiss the Landlord's claim for

compensation. As the Landlord has not been successful with its claim I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

I order the Landlord to return the security deposit of \$725.00 plus zero interest to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$725.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 20, 2019

Residential Tenancy Branch