



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, DRI, AS, AAT, LRE, FFT

Introduction

This hearing was scheduled to convene on August 20, 2020 at 9:30 a.m. by way of conference call concerning an application made by the tenant seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- disputing a rent increase;
- an order that the landlord allow the tenant to sublet or assign the rental unit;
- an order allowing access to the rental unit by the tenant and the tenant's guests;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenant testified that the landlord was served with the application, evidence, and notice of this hearing (the Hearing Package) by registered mail on July 17, 2020 and has provided a Canada Post Registered Domestic Receipt as well as a Canada Post cash register receipt bearing that date and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the tenant testified that he has vacated the rental unit and withdrew the applications for an order allowing the tenant to assign or sublet, and for an order allowing access to the rental unit for the tenant and the tenant's guests, and for an order limiting or setting conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord or money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for breach of the tenancy agreement?
- Has the tenant established that rent was increased contrary to the *Residential Tenancy Act* and regulations?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 1, 2016 and the tenant vacated the rental unit on July 9, 2020. Rent in the amount of \$650.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in a semi-detached house, and the landlord resided upstairs; the tenant did not share kitchen or bathroom facilities with the landlord. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant had given notice to vacate the rental unit on June 29, 2020 and a copy has been provided for this hearing. It is dated June 20, 2020 and contains an effective date of vacancy of July 31, 2020.

The landlord would not let the tenant into the rental unit after July 9, 2020, and the tenant had paid rent for the month. The tenant had left a letter for the landlord, dated July 8, 2020 which states that the tenant has re-calculated the rent payment for July as follows: rent is \$650, less \$325 for an overpayment on the security deposit and less \$900 for overpayment from January 1 to June 30, 2020, for a total of \$575 overpaid. It provides an email address and phone number and requests return of the \$650.00 security deposit via Interac.

The parties exchanged emails wherein the landlord told the tenant to return the keys immediately, although the tenant intended to return the keys at the end of the tenancy.

The landlord's email to the tenant also said to not go near the landlord's door after the tenant served the letter.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling **\$3,923.24**:

1. \$14.96 for the cost of returning keys to the landlord;
2. \$58.28 for mail forwarding;
3. \$450.00 for overpayment of rent from April 1 to July 31, 2020;
4. \$800.00 for breach of agreement for “no guests;”
5. \$325.00 for overpayment of the security deposit;
6. \$325.00 for return of security deposit;
7. \$1,300.00 for prohibition to sub-lease;
8. \$650.00 for return of rent following illegal eviction.

To substantiate the claims, the tenant offered the following:

1. a Canada Post cash register receipt dated July 13, 2020 in the amount of \$14.96 has been provided for this hearing for the cost of returning the keys to the landlord;
2. the tenant lost access to his mail so had to arrange for that before the end of the tenancy; a receipt dated July 13, 2020 has been provided for this hearing;
3. about 2 years ago the landlord increased rent to \$700.00, then to \$800.00 to allow the tenant’s girlfriend to be there. The tenant has limited the claim to April, May, June, and July, 2020. The tenant has provided a copy of a text message from the landlord dated March 13, 2020 allowing the tenant’s girlfriend to stay in the rental unit for 2 weeks at a charge of \$200.00;
4. the landlord didn’t want any guests and wanted to approve any, and threatened to have people remove the tenant;
5. the tenant withdraws this portion of the claim because the tenant provided a forwarding address in writing to the landlord by registered mail, and the time for returning the security deposit has not yet expired;
6. the tenant withdraws the request for return of the security deposit until the time has expired for the landlord to return it;
7. the tenant’s statement and claim document states that the landlord from April 1, 2020 disallowed the tenant to sub-lease, and an example of the landlord’s refusal dated July 9, 2020 has been provided for this hearing;
8. July’s rent as re-calculated by the tenant should be returned to the tenant.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenancy ends only in certain ways, one of which is notice given by a tenant. In this case, the tenant gave notice to vacate effective July 31, 2020, and I find that is the date the tenancy ended, regardless of what date the tenant actually vacated.

The tenant testified that there were no rental arrears, however, having read the emails, text messages and other evidentiary material provided by the tenant, I find that the tenant did not pay any rent for the month of July, 2020, instead sending a communication to the landlord indicating what the landlord owed the tenant. A tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement.

A landlord must not increase rent contrary to the regulations, and must not impose a fee upon the tenant for overnight guests. I accept the undisputed testimony and evidentiary material of the tenant that the tenancy agreement specified \$650.00 per month for rent and the tenant has clearly paid \$800.00 each month from April to June, 2020, but has not paid any rent for July. I am also satisfied in the evidence that the landlord requested an additional \$200.00 for an overnight guest. I find that the tenant has established a claim of \$450.00 as overpayment of rent and \$200.00 for the overnight guest fee.

I am not satisfied, that even though the tenant offered, the landlord was obligated to accept a sub-tenant after the tenant had vacated, and the tenant has failed to establish any damage or loss with respect to the landlord's prohibition to sub-lease.

The tenant was required to return keys to the landlord, and the tenant's choice to send them by registered mail is not an expense that the landlord should endure. I dismiss the tenant's \$14.96 claim for returning the keys.

I also dismiss the tenant's claim of \$58.28 for forwarding mail. The tenant gave the landlord notice to end the tenancy, and the tenant would have had to get mail forwarded in any event. That is not the responsibility of the landlord even if the tenant had to vacate earlier than the effective date of the tenant's notice; the tenant has not established any loss.

The tenant also claims \$800.00 for the landlord's breach of the *Act* or the tenancy agreement for refusing the tenant to have guests. In order to be successful, the tenant must establish that the tenant suffered a loss, and that the tenant did what was reasonable to mitigate. The tenant has not provided any evidence of either, and I dismiss this portion of the tenant's claim.

There is no evidence to satisfy me that the tenant made any effort until July 9, 2020 to sublet. I am satisfied in the evidence provided that the tenant wanted to sublet after he physically vacated, and I dismiss the tenant's \$1,300.00 claim for the landlord's prohibition to allow a sub-lease.

The tenant's \$650.00 claim for return of July's rent is also dismissed; the tenant didn't pay any rent for July, 2020.

The *Residential Tenancy Act* allows a tenant to withhold rent if the security deposit collected by the landlord is more than half the rent, and the tenant has done so, but has also chosen to make other deductions and has not paid rent to the end of the tenancy. Since the tenancy has ended, and I have no application before me from the landlord, I make no orders with respect to the security deposit.

In summary, I find that the tenant has established a claim of \$450.00 for the rent increase and \$200.00 for an overnight guest fee.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

This order is final and binding and may be enforced.

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: August 24, 2020

Residential Tenancy Branch