



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding END HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On September 28, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The owner (“the Landlord”) and the Tenant attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for a loss of December 2020 rent?
- Is the Landlord entitled to keep the security deposit towards the claim?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 1, 2019, on a month to month basis. Rent in the amount of \$1,750.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$875.00. The parties testified that the tenancy ended on November 30, 2020.

December 2020 Rent

The Landlord is seeking a monetary order for \$1,750.00 for a loss of December 2020 rent. The Landlord testified that the Tenant moved out of the rental unit without giving proper written notice as required under the Act.

The Landlord testified that she was not able to re-rent the unit for December 2020 and she received no amount of rental income for the unit for December 2020.

In reply, the Tenant testified that on November 6, 2020 the Landlord asked her to move out of the rental unit. The Tenant testified that the Landlord mentioned they were going on holidays and wanted the Tenant to be out upon their return.

The Tenant testified that when the Landlord returned home on November 29, 2020, she stated that the Tenant had acted quickly and stated that the Landlord would come by with the security deposit. The Tenant submitted that her sister witnessed the conversation. The Tenant submitted that it was a verbal agreement that was not captured in writing with no requirement to issue a notice to end tenancy.

In reply, the Landlord testified that she never told the Tenant to get out before they returned from their vacation. The Landlord stated that she is aware that tenancies do not end in that fashion. The Landlord testified that there was no conversation or agreement as described by the Tenant. She testified that she expected to receive a proper written notice to end tenancy.

In response, the Tenant stated that she has provided a witness statement about the conversation.

Security Deposit

The Landlord testified that she received the Tenant's forwarding address in writing on September 23, 2020. On September 28, 2020 the Landlord applied to keep the security deposit of \$875.00 in partial satisfaction of the Landlord's claim for a loss of rent. The Landlord confirmed that she is still holding the \$875.00 security deposit.

The Tenant testified that on November 30, 2020 after a thorough inspection of the rental unit the Landlord gave her a cheque in the amount of \$875.00. The Tenant testified that she deposited the cheque which did not clear because the Landlord put a stop payment on the cheque. The Tenant testified that the bank charged her a fee of \$7.50 due to the stop payment.

The Landlord agreed that they will reimburse the \$7.50 to the Tenant.

Analysis

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Section 44 of the Act provides that A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [tenant's notice];
 - (i.1) section 45.1 [tenant's notice: family violence or long-term care];
 - (ii) section 46 [landlord's notice: non-payment of rent];
 - (iii) section 47 [landlord's notice: cause];
 - (iv) section 48 [landlord's notice: end of employment];
 - (v) section 49 [landlord's notice: landlord's use of property];
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
 - (vii) section 50 [tenant may end tenancy early];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Loss of Rent

I find that a tenancy ends only if a tenant or landlord gives notice to end the tenancy in accordance with section 44 of the Act. A tenant's notice to end tenancy must comply with section 52 of the Act which requires a notice to end tenancy to be in writing.

I find that the Tenant did not give the Landlord a written notice to end tenancy as required under the Act. The Tenant vacated the rental unit on November 30, 2020; however, the earliest date that the tenancy could legally end is December 31, 2020.

Any verbal conversation that took place on November 6, 2020 where it is alleged that the Landlord stated she hoped the Tenant would be moved out when the Landlords returned from vacation is not a valid or enforceable notice to end tenancy or a mutual agreement to end tenancy.

I find that the Landlord did not re-rent the unit for December 2020 and received no rent for the unit for the month of December 2020. Therefore, the Tenant is responsible to pay the rent for the month of December 2020.

I grant the Landlord the amount of \$1,750.00 for a loss of December 2020 rent.

Security Deposit

I find that on September 23, 2020 the Landlord received the Tenant's forwarding address. On September 28, 2020 the Landlord applied to keep the security deposit which is within 15 days of when the Landlord received the Tenant's forwarding address. The security deposit of \$875.00 will apply to the award granted to the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord is awarded \$1,850.00 for a loss of rent and the filing fee. After deducting the bank fee of \$7.50 from the award of \$1,850.00, I find that the Tenant owes the Landlord a balance of \$1,842.50. After setting off the security deposit of \$875.00 against the \$1,842.50, I find that the Tenant owes the Landlord the amount of \$967.50.

This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Landlord was successful with the claim for a loss of rent against the Tenant. The Tenant owes the Landlord the amount of \$1,842.50 for a loss of December 2020 rent and the \$100.00 filing fee.

I authorize the Landlord keep the amount of \$875.00 from the security deposit. I order the Tenant to pay the Landlord the balance of \$967.50.

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 3, 2021

Residential Tenancy Branch