



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given an opportunity to provide testimony and present evidence. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on July 1, 2022 with a monthly rent of \$1450.00 payable on the 1st day of each month. The tenants paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

On July 12, 2022 the tenants provided the landlord a notice to end tenancy by text message stating they would be vacating August 10, 2022. The landlord responded that if they vacate August 10, 2022 they would be responsible for rent for the full month of

August 2022 so stated the unit needed to be empty by July 31st. The tenants vacated July 31, 2022.

Both parties were fixated on the reason for the tenancy ending, which I note was not a legal basis to end a tenancy without sufficient notice and at the end of the day was not relevant to decide the matter before me. In doing so, neither party properly presented evidence that was relevant. I have made this decision based upon the brief relevant testimony of the parties and evidence submissions on file.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date after the landlord receives the notice, and

(b) is before the day in the month...that rent is payable under the tenancy agreement.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenant provided a notice to the landlord on July 12, 2022 to end the tenancy effective August 10, 2022. The earliest possible effective date for the tenant's notice to end this periodic tenancy pursuant to section 45 of the Act was August 31, 2022.

However, in this case, the landlord responded to the tenants notice and suggested that they vacate even sooner on July 31, 2022, otherwise they would be responsible to pay rent for the full month of August 2022. I find that based on the text message correspondence submitted on file by the landlord herself, the landlord not only accepted the tenants notice via text message but also waived her right to the notice period required under the Act. It was upon the landlord's own request that the tenants vacate

the rental unit even sooner. Instead, the landlord should have advised the tenants that she is not accepting the end of the tenancy until August 31, 2022. The landlord cannot ask the tenants to move earlier and subsequently make a claim for loss of rent.

The landlord's application is dismissed without leave to reapply. I make no orders in regard to the security deposit as I have no information on whether or not the tenants provided a forwarding address to the landlord. The tenants' security deposit will need to be addressed in accordance with section 38 of the Act.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed 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: May 01, 2023

Residential Tenancy Branch