Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNRL-S LRSD FFL MNSD FFT

Introduction

The Landlord seeks $5,100.00 in compensation for *Residential Tenancy Act* (the "Act") for loss of rent and for the cost of their application fee. By way of cross-application the Tenant seeks the return of their $800.00 security deposit along with an additional $100.00 for the cost their application fee. This decision pertains to both applications.

Issue

Is either party entitled to any compensation?

Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The parties communicated and met in person in December 2023. The Tenant viewed the property several times and agreed to rent the property effective February 1, 2024. In anticipation of renting the property, the Tenant paid $800.00 toward an eventual security deposit of $1,050. Monthly rent would have been $2,100.00.

The Landlord held the property, also anticipating that the Tenant was to move in on February 1, 2024. The Tenant had put in a job transfer and was expecting everything to proceed smoothly. However, the job transfer did not proceed smoothly, and the Tenant found out that the job transfer would not take place until mid-February 2024. The Tenant messaged the Landlord on January 22, 2024, and told the Landlord that she would not be moving in.

The Landlord seeks lost “rent” for January 2024 and the loss of rent for February 2024. He was able to secure new tenants who moved in for March 1, 2024.

The Tenant, in their version of event, submits that no tenancy ever began. The Tenant changed their mind on renting the property and the Landlord refused to return the security deposit. Further, the Tenant’s application explains that “No rental application signed no rental agreement filled out or signed. Landlord refused to meet in person or give addresses for service.”

Analysis

As a starting point in my analysis, it is worth making note of section 16 of the Act, which states that the “rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.”

“Tenancy agreement” is defined in section 1 of the Act as “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.”

Section 17 of the Act states that “A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.”

The Landlord testified that no written tenancy agreement was ever completed (he expected to complete this paperwork when the Tenant was closer to moving in or moving in). And the Tenant testified that nothing was ever signed, including even a rental application. However, the Tenant paid the Landlord $800.00 for a security deposit, and the Landlord agreed to hold the property until the Tenant moved in. Both parties agreed that the tenancy would presumably start on February 1, 2024.

These facts lead me to find that there was an express, oral agreement between the Landlord and the Tenant respecting possession of a rental unit effective February 1, 2024. In other words, while neither party signed a written tenancy agreement, they entered into a tenancy agreement—for the purposes of the Act—at some point between December 28, 2023, and January 2, 2024. The parties had what is considered a “meeting of the minds” as to when the Tenant would move into the rental unit, and for how much.

Under the oral agreement reached, the Tenant was obligated under section 45(1) of the Act to give the Landlord at *least* one months' notice to end the tenancy. While it is unclear as to whether the tenancy was a fixed-term or periodic (monthly) tenancy, the Tenant was nevertheless obligated to give the Landlord a minimum of one clear month's notice to end the tenancy.

In other words, by letting the Landlord know on January 22 that she was not going to take the place, the earliest that the tenancy would end was February 29, 2024. At this point, I acknowledge that the Tenant's job transfer was perhaps the primary or most significant factor in causing the tenancy to be terminated, but this factor does not, in my opinion, preclude the Tenant's obligations under the Act.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

In this case, the Tenant breached the Act by not providing sufficient notice to end the tenancy as is required under section 45 of the Act. The Landlord suffered a monetary loss of one month's rent in the amount of $2,100.00 because of the breach. And it is my finding that the Landlord took reasonable steps to minimize the loss by re-listing the rental unit immediately after the Tenant terminated the tenancy.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving his claim for the loss of rent for February 2024 in the amount of $2,100.00.

However, I am not satisfied that the Landlord "lost" rent for the month of January 2024. There was no expectation that the Tenant would ever pay rent for January, nor did the Landlord ask that the Tenant pay rent for January. Indeed, the tenancy was to start on February 1, 2024, and that is when the payment of rent would begin. Not earlier.

While I appreciate the Landlord's frustration in holding the rental unit for a month (rent free, as it were) only to have the Tenant later terminate the contract, the Landlord is not entitled to compensation for the mere holding of the property. I therefore decline to award any compensation for lost "rent" for January 2024.

The Landlord is entitled to additional compensation of $100 for the cost of the Residential Tenancy Branch application fee, under section 72 of the Act.

In total, the Landlord is awarded $2,200.00 in compensation. Pursuant to subsection 38(4) of the Act the Landlord is authorized and ordered to retain the Tenant's $800.00 security deposit in partial satisfaction of the amount awarded.

The Tenant is ordered, pursuant to section 67 of the Act, to pay the balance of $1,400.00 to the Landlord. The Landlord is issued with a monetary order for this amount and the Landlord must serve a copy of the monetary order upon the Tenant.

For these reasons, the Tenant's application is respectfully dismissed.

Conclusion

The Landlord's application is granted, in part, and the Landlord is awarded $2,200.00.

The Landlord is authorized to retain the security deposit and is issued with a monetary order. A copy of the monetary order must be served by the Landlord upon the Tenant.

The Tenant's application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 1, 2024

Residential Tenancy Branch