



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlords; their agent; the tenant and her agent.

The tenant's agent identified that they had a witness who would be available to provide testimony regarding their notice to end the tenancy. The agent identified the witness as their new landlord and that the new landlord would be able to testify to what the tenant told the new landlord at the time.

As the new landlord has no direct knowledge of or was a direct witness to any conversations held between the tenant and this landlord I found the new landlord would not provide any relevant testimony. Further, based on the testimony provided by the tenant regarding how her notice to end tenancy was given to the landlord I also found that the new landlord's testimony would have no relevance to the outcome of this matter. I did not allow the tenant's witness.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the Act.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on May 25, 2012 for a month to month tenancy beginning on June 1, 2012 for a monthly rent of \$1,150.00 due on the 1st of each month with a security deposit of \$500.00 paid.

The landlord submits that the tenant provided no notice of their intention to end the tenancy and on August 1, 2013 they vacated the rental property. The landlord seeks compensation in the amount of \$1,150.00 for rent for the month of August 2013 because the tenant failed to provide adequate notice of their intent to end the tenancy.

The tenant submits that she had advised the landlord a couple of months prior to the end of the tenancy that she would be looking elsewhere for accommodation and that on July 20, 2013 she asked if she could vacate the rental unit on August 15, 2013 and that the landlord agreed to let them leave on July 31, 2013.

The landlord acknowledges that they had a conversation on July 20, 2013 but that it was the tenant asking if they could rent an additional bedroom in the residential property. The landlord submits they agreed and offered the additional room for an additional \$400.00 per month but the tenant turned this down.

The landlord submits that during the tenancy the tenants cause damage and has provided photographic evidence showing some scuffs on a baseboard; holes in a wall that the landlord submits is where the tenant's television was mounted; and a section of drywall damaged by a door knob. The landlord acknowledges that no special instructions were provided to the tenants regarding hanging anything on the walls of the rental unit. The landlord seeks compensation in the amount of \$950.00 for repairs to the walls and painting of the entire rental unit, including the ceiling.

The tenant submits that there had been students living in the unit before her and that the damage existed prior to the start of her tenancy. The tenant submits that she has not received any portion of her security deposit from the landlord and that she provided her forwarding address in a letter dated August 14, 2013. The landlord provided a copy of this letter into evidence.

The landlord submits that the rental unit was relatively new and a condition inspection report was not completed at the start of the tenancy.

Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a 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 that rent is payable under the tenancy agreement.

Section 52 of the *Act* stipulates that for a notice to end tenancy issued by the landlord to be effective the notice must be in writing; be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy and be in the approved form.

While the parties both have different versions of the conversation held on July 20, 2013 I find without determining what actually occurred in that conversation does not change the fact that the tenants failed to provide notice to end their tenancy that is compliant with either Section 45 or Section 52.

That is to say that even if the conversation was that the tenants were seeking to end the tenancy on August 15, 2013 that end date would not be the day prior to the day in the month that rent is due and the discussion was on July 20, 2013 and August 15, 2013 is not one month later. Therefore this notice was not compliant with Section 45. The tenants have also failed to provide any evidence that there was any mutual agreement between the parties to accept any end date.

In addition the “notice” would have been verbal and no written notice provided and as such the tenant’s notice to end tenancy was not compliant with Section 52.

For these reasons, I find the tenants failed to provide the landlord with a notice to end tenancy compliant with the *Act* and the tenants are responsible for the payment of rent for the month of August 2013.

As to the landlord’s claim for compensation for damage to the rental unit I find that the landlord has failed to provide any evidence of the condition of the rental unit at the start of the tenancy and as such cannot attribute any of the damage to be caused during the tenancy. I dismiss this portion of the landlord’s claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant’s forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties I accept the tenant provided the landlord with her forwarding address by way of letter sent to the landlord on August 14, 2013. Allowing 5 days for delivery of the letter I find the landlord received that letter no later than August 19, 2013 and as such the landlord had until September 3, 2013 to either return the deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlord filed their Application on October 22, 2013 I find the landlord failed to comply with Section 38(1) and as such the tenant is entitled to return of double the deposit in accordance with Section 38(6).

As both parties have been at least partially successful I find that each is entitled to recover their respective filing fees from the other party. However, as both parties paid the same filing fees this finding is moot.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$150.00** comprised of \$1,150.00 rent owed less \$1,000.00 representing double the amount of the security deposit owed to the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: November 07, 2013

Residential Tenancy Branch

