



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC; LRE; MNDC; MNSD; FF

Introduction

This Hearing was convened in response to the Tenant's application to cancel a Notice to End Tenancy for Cause; an order suspending or restricting the Landlord's right to enter the rental unit; for compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing documents and documentary evidence by registered mail. He stated he could not remember the date the documents were sent and that he did not have a copy of the receipt. The Landlord acknowledged receipt of the documents.

The Tenant testified that he received the Landlord's seven pages of documentary evidence "yesterday at 4:00 p.m." The Tenant did not wish to adjourn the matter to allow him more time to consider the Landlord's documentary evidence.

At the outset of the Hearing, it was determined that the Tenant moved out of the rental unit on or about November 10, 2014. Therefore, the Tenant's application to cancel the Notice to End Tenancy for Cause is dismissed as the tenancy has ended. Likewise, the Tenant's application for an Order limiting or suspending the Landlord's right to enter the rental unit is dismissed.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act?
- Is the Tenant entitled to return of the security deposit?

Background and Evidence

This tenancy began on May 15, 2011. The rental unit is the upper suite of the rental property. There is another suite in the lower part of the rental property, which is also rented out by the Landlord.

Monthly rent was \$1,300.00, due on the first day of each month. The Tenant paid a security deposit of \$650.00 at the beginning of the tenancy.

The Tenant gave the following testimony:

The Tenant stated that he wished to withdraw several parts of his claim and to proceed on the remaining issues only. Specifically, he wants to:

1. Withdraw his application for return of the \$650.00 security deposit. The Tenant stated that he and the Landlord had reached an agreement that she could keep \$50.00 of the security deposit and that she would return the remainder.
2. Withdraw his claim for reimbursement of \$165.00 for the cost of a course he missed to attend this Hearing.
3. Withdraw his claim for parts installed on the Landlord's fence in the amount of \$50.39.

The remainder of his claims are for:

1. Cost of container for moving on short notice, in the amount of \$622.13.
2. Loss of use of the rental unit, in the amount of \$900.00.

The Tenant stated that the Landlord evicted him for reasons that were not justified. The Tenant testified that he filed his monetary claim because the Notice to End Tenancy was not a valid notice. He stated that he didn't want to subject himself or his young son to more conflict with the Landlord and therefore he moved out. The Tenant testified that he would not have incurred moving costs if he didn't have to move and that he did not have use of the rental unit for the full month of November, 2014.

The Landlord gave the following testimony:

The Landlord stated that she no longer agrees to return \$600.00 of the security deposit to the Tenant. She said that after the move-out walk through she noticed that the Tenant had left gravel on the drive-way, which she wants removed.

The Landlord testified that she issued the Notice to End Tenancy because the downstairs occupant was being harassed by the Tenant. The Landlord testified that the Tenant had also threatened her, telling her, "You'll get yours, too."

The Tenant gave the following response:

The Tenant has not yet provided the Landlord with his forwarding address, in writing.

The Tenant testified that he collected "small sand-like" pebbles from the road to fill in some "pot holes, depressions and sink holes" in the paved driveway.

The Tenant denied threatening or harassing the downstairs occupant or the Landlord and stated that it was just their interpretation of his comments.

Analysis

I allow the Tenant to withdraw the portions of his monetary claim, as requested.

Regarding the security deposit:

Security deposits must be dealt with in accordance with the provisions of the Act. Section 38 of the Act provides that a landlord has 15 days from receipt of a tenant's forwarding address in writing to either return the security deposit to the tenant or to file an application for dispute resolution claiming against the deposit. In this case, the Tenant has not provided his forwarding address in writing and therefore I find that his application for return of the security deposit is premature. During the course of the Hearing the Tenant confirmed that the address on his Application for Dispute Resolution is still his address for service. Therefore, **I order that, within 15 days of receipt of this Decision, the Landlord either: return the security deposit in full to the Tenant at the address given on the Tenant's Application; or file her own application claiming against the security deposit.**

Regarding the Tenant's claim for moving expenses and loss of use of rental unit:

Section 47 of the Act provides that a tenant may dispute a Notice to End Tenancy for

Cause within 10 days after the date the tenant receives the Notice. This was the Tenant's remedy if he believed that the Notice was not a valid notice to end the tenancy. I dismiss this portion of the Tenant's claim.

The Tenant has not been successful in his Application and I find that he is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's Application is **dismissed without leave to reapply**.

I order that, within 15 days of receipt of this Decision, the Landlord either: return the security deposit in full to the Tenant at the address given on the Tenant's Application; or file her own application claiming against the security deposit.

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: January 05, 2015

Residential Tenancy Branch

