



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR

Introduction

This hearing dealt with application from the landlord under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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 recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Neither party submitted any documentation for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

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

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about September 1, 2012 and ended on July 3, 2014. Rent in the amount of \$2250.00 is payable in advance on the first day of each month. A security deposit of \$1125 was paid by the tenant and returned to them within two weeks of the tenancy ending. The landlord testified that the tenant gave her notice on July 1, 2014 that he would be moving out by July 3, 2014. The landlord testified that she is seeking one month's rent because the tenant did not give a full month's notice and also seeks the recovery of the filing fee.

The tenant gave the following testimony. The tenant testified that on June 28, 2016 a major water leak occurred and that it required a wall to be opened up. The tenant testified that there was extensive mould and that the renovation company advised that a “HAZ MAT” team was required to deal with it due to its severity. The tenant testified that he spoke to the landlord that evening and advised that he wouldn’t be able to live in the unit anymore and would be out of the unit by July 3, 2014. The tenant testified that on July 1, 2014 he paid the July rent by e-transfer as he felt he had to “do the right thing and pay” even though he was moving out in two days.

The tenant testified that on July 2, 2014 the landlord returned his rent along with his security deposit and advised him that he was free to go and that there were no conditions on the return of the money. The tenant testified that he thought the matter was over and dealt with and that it was a fair resolution in the matter. The tenant testified that three months later the landlord advised that she wanted the July rent and that if he didn’t pay she would take him to arbitration. The tenant testified that he was “shocked” when the landlord made this demand as he had to move out on such short notice. The tenant testified that he feels that the landlord has acted poorly by first returning the money and then demanding that he pay again.

Analysis

While I have turned my mind to all the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below.

The landlord is not entitled to the amount as claimed for the following reasons. The landlord confirmed that the tenant did pay the July rent. The landlord testified that she was “unaware of the tenancy laws but I knew I had to do something within 14 days or he gets back double his rent”. The landlord confirmed that she returned the rent money and the tenants’ deposit. The landlords’ lack of knowledge in regards to the Residential Tenancy Act does not relieve her of her obligations nor does it give her the ability to make a claim without sufficient evidence to support her position. In this matter, the landlord knowingly and willingly returned the rent and deposit back to the tenant without mention of any stipulations or conditions giving the tenant the impression that the matter was resolved.

Based on the above, I find her actions and comments equate to express waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. I find that the landlord waived her right to any rent when she returned the rent money and advised the tenant that the matter was over with. The landlord has not been successful in her application.

Conclusion

The landlords' application is dismissed in its entirety.

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, 2017

Residential Tenancy Branch