



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenant advised that he did not intend to dispute the notice to end the tenancy, and withdrew that application as well as the application for more time than prescribed to dispute a notice to end the tenancy.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation under Section 49 and recovery of costs for repairing the lawn and garden irrigation system?
- Has the tenant established a monetary claim as against the landlord for return of the security deposit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 18, 2015. Rent in the amount of \$1,600.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that on May 30, 2017 the landlord told the tenant that she was selling the house and told the tenant he would have to move unless he purchased it. The tenant was not in a position to do so, and on May 31, 2017 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided for this hearing. It is dated May 31, 2017 and contains an effective date of vacancy of July 31, 2017. The reason for ending the tenancy states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

On June 3, 2017 the tenant gave the landlord a notice in writing stating that the tenant would be vacating the rental unit on June 15, 2017, a copy of which has been provided for this hearing. The tenant paid rent in full for the month of June, 2017 and actually vacated the rental unit on June 15, 2017. The tenant claims the unused portion of half a month's rent, or \$800.00 and compensation equivalent to 1 month's rent.

The tenant has not provided the landlord with a forwarding address in writing except on the Tenant's Application for Dispute Resolution which was served on the landlord by registered mail on July 11, 2017. The tenant claims \$800.00 for the return of the security deposit.

The tenant also testified that he made repairs to the irrigation system for the lawn and gardens after a valve had frozen over winter, and claims \$66.28 as against the landlord.

The landlord testified that she had intended to give the tenant compensation by not charging rent for the last month of the tenancy, and the effective date of vacancy of the 2 Month Notice to End Tenancy for Landlord's Use of Property was July 31, 2017.

The tenant left damages to the rental unit, and had blown out the irrigation system last year and the landlord paid the tenant for it. Any damage or injury was due to the tenant's failure to complete it properly. The landlord arrived in May, 2017 and had asked to see the property because of complaints received from neighbours. However, the tenant didn't

want the landlord to see it. The lawn had not been irrigated, trees died, and the tenant said he'd fix it. The tenant never told the landlord that the irrigation system required repair.

The tenant didn't want to be in the home while it was listed for sale, and the landlord intended to repair it, not demolish it.

Analysis

Firstly, the *Residential Tenancy Act* states that where a landlord serves a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord must provide the tenant with compensation equivalent to 1 month's rent, which is usually accomplished by not charging rent for the last month of the tenancy. However, the *Act* also states that once served with such a notice, the tenant may end the tenancy earlier by serving the landlord with no less than 10 days written notice to end the tenancy earlier, and the landlord is still required to provide 1 month's rent as compensation. It also states that if the tenant does so, the tenant pays rent to the effective date of the tenant's notice and if rent has already been paid for that period, the landlord must reimburse the tenant for the unused portion. In this case, I am satisfied that the landlord has not provided any compensation, and the tenant has established a claim of \$1,600.00 as well as the unused portion of June's rent, which is half of the month, or an additional \$800.00.

With respect to the security deposit, a landlord is required to return it in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against it within that 15 day period. In this case, the tenant did not provide the landlord with a forwarding address in writing until the tenant served the landlord with the application before me.

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a written notice. Additionally, landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the security deposit. The landlord has now been served with the forwarding address, and I deem today, September 5, 2017 to be the date that the landlord received the tenant's forwarding address in writing. The landlord will have 15 days from today's date to comply with the *Act* by returning the security deposit to the tenant or apply for dispute resolution claiming against it. The tenant's application for a monetary order for return of the security deposit is dismissed with leave to reapply.

With respect to repairs to the irrigation system, the *Act* permits a tenant to make emergency repairs and claim the costs from the landlord, however the *Act* specifies what

emergency repairs are, and requires the tenant to notify the landlord and give the landlord an opportunity to make the repair. In this case, I find that the repair does not qualify as emergency repairs, nor did the tenant notify the landlord or give the landlord an opportunity to make the repair. Therefore, the tenant's application for reimbursement of the costs associated with that repair cannot succeed.

The tenant didn't lead any evidence with respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and since the tenancy has ended, I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,500.00.

The tenant's application for a monetary order for return of the security deposit is dismissed with leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: September 05, 2017

Residential Tenancy Branch