



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODCROFFTE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 17, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on May 1, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 1, 2019. The monthly rent was \$1,800.00 payable on the 1st day of each month. A security deposit of \$900.00 was paid.

The landlord seeks a monetary claim of \$900.00 for unpaid rent for ½ of July 2019 rent. The landlord stated that the tenant gave improper notice to end the tenancy on June 18, 2019 for June 30, 2019. The landlord stated that the rental unit was still occupied in July 2019 by the tenant's roommate. The landlord attempted to schedule a condition inspection report for the move-out on July 12, 2019 and again on July 26, 2019 without success. The landlord emailed a request of a final opportunity to conduct a condition inspection report for the move-out on July 30, 2019 for July 31, 2019, but the tenant failed to respond.

The tenant argues that the landlord breached a material term of the tenancy and as such, the tenant was forced to give notice to end the tenancy. The tenant clarified that on June 5, 2019 the tenant received a verbal attack from the landlord. The tenant stated that the written notice dated June 18, 2019 was personally given to the landlord to end the tenancy on July 31, 2019. The tenant stated that subsequently the landlord was given another notice to end tenancy on June 23, 2019 for June 23, 2019.

The landlord further argued that there was no breach and that the tenant was having roommate issues as the roommate had misrepresented herself. The landlord referred to the tenant's evidence "Notice of Eviction" dated June 18, 2019 to her roommate. It states in part, "The current living situation is no longer viable, you have overstepped your bounds as an occupant/roommate."

The tenant seeks a monetary claim of \$900.00 for return of the security deposit. Both parties confirmed the tenant provided her forwarding address in writing for return of the \$900.00 security deposit on June 23, 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of the landlord and find that a claim for unpaid rent/loss has been established for \$900.00 for ½ of the monthly rent. Both parties confirmed that initial notice to end tenancy was given by the tenant on June 18, 2019 for June 30, 2019. This was followed up by notice to end tenancy on June 23, 2019 by the tenant who vacated the rental unit on June 23, 2019. However, the tenant's roommate still occupied the rental unit until well into July 2019.

Residential Tenancy Branch Policy Guideline #13, Rights and Responsibilities of Co-Tenants, states in part,

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, there is no co-tenant but an occupant/roommate. It is clear based upon the undisputed evidence that the roommate over held the rental unit until well into July 2019. The roommate has no rights or obligations under the tenancy agreement. These obligations belong to the tenant. On this basis, I find that the landlord has established a claim for unpaid/loss of rent for July 2019 of \$900.00.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

The tenant is entitled to return of the \$900.00 security deposit.

The landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$900.0 in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$100.00.

Landlord's successful claim of \$900.00 + \$100.00 Filing Fee = \$1,000.00 - \$900.00
Tenant's security deposit = \$100.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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 8, 2019

Residential Tenancy Branch