



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 15, 2022 seeking compensation for monetary loss/other money owed, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 12, 2023.

Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The Tenant confirmed they received the Notice of Dispute Resolution Proceeding for this hearing from the Landlord, and the Landlord’s prepared evidence. The Landlord also confirmed they received prepared evidence from the Tenant.

Issue(s) to be Decided

Is the Landlord eligible for compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

As part of their evidence, the Landlord provided a copy of the tenancy agreement between the parties. The tenancy started on April 3, 2022 for an initial fixed term until

April 3, 2023. The monthly rent was \$2,300 payable on the 3rd of each month. The Tenant paid a security deposit of \$1,150.

The record shows that the Tenant informed the Landlord of the end of tenancy via email on November 14, 2022. This set the final end-of-tenancy date for December 3, 2022. The record also shows the Landlord responded on November 16 via text message, informing the Tenant that “we will need at least one month written notice please.” The Landlord informed the Tenant that they would not be able to find new tenants for December, based on the short notice timeframe from the Tenant. The Landlord stated: “Please leave at the earliest, Jan 1 or Jan 3rd please.”

The Landlord provided images of their efforts at advertising the rental unit, as of November 18. In the hearing, the Landlord described obtaining the key from the Tenant on December 4, 2022.

The Landlord described their efforts at obtaining new tenants as soon as possible. This meant the Landlord had to compromise on their preferences for a tenant that would not smoke and would not have pets. The Landlord stated they had to place a lot of advertisements and deal with a lot of stress to obtain new tenants in the rental unit. The Landlord stated they obtained new tenants in the rental unit starting for December 15.

The Landlord seeks compensation for one-half month’s rent; that is the period from December 1st to December 15th when they had no tenants in the rental unit. They attribute this monetary loss to the Tenant’s short notice to end the tenancy.

In response to what the Landlord presented, the Tenant confirmed the dates set out by the Landlord. The Tenant stated they did send a note to the Landlord on November 16 to inform them of the early December end to this tenancy. The Tenant denied that the rental unit was left in an unclean state. The Tenant also cited the Landlord’s breach of the tenancy agreement, specifically there being no power in the garage that they needed to use on a regular basis.

In their evidence, the Tenant provided a number of text messages they had with the Landlord about the issues they raised during the tenancy, primarily involving repairs.

Analysis

The Landlord provided a copy of the agreement that shows this was a fixed-term tenancy at the time, with that fixed term not ending until April 2023. The Tenant sought to end this tenancy with short notice on November 16, 2022.

The *Act* s. 45(2) specifies that a tenant may end a fixed-term 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. More importantly, this date cannot be earlier than the date specified as the end of the fixed-term tenancy as set out in the agreement.

This section also specifies that a notice given by a tenant must comply with the s. 52 stipulations of form and content. Those are: in writing, with signature and date, the address of the rental unit, and the effective date of the notice.

Here, I find the Tenant provided a message to the Landlord on November 16, intending to end the tenancy for December 3. This is not a legal notice to end the tenancy: as evidenced by the Landlord's subsequent requests, that notice was not in writing, and did not comply with the requirements of s. 45 in terms of the timeline.

I find, strictly speaking, that the Tenant did not have the right to end the tenancy in the manner they did. Moreover, the Tenant was legally obligated to maintain the tenancy until at least the end of the fixed term, on April 3, 2023.

I find the Landlord has mitigated their damages, and the expense to the Tenant, by only claiming for the one-half month of December that they were without tenants in the rental unit. I find the Landlord is rightfully entitled to compensation from the Tenant for the Tenant's breach of s. 45 of the *Act* in ending the tenancy in an unauthorized manner.

The notice from the Tenant was not in line with the *Act* or the tenancy agreement. The Tenant is obligated for some amount of December rent, and the Landlord has – generously – opted to claim one-half month of rent. I find that one-half amount of monthly rent is suitable compensation to the Landlord in this situation.

I grant the Landlord an equivalent of one-half monthly rent; this amount is \$1,150. The Landlord applied against the security deposit within 15 days of the end of this tenancy, and by s. 38 of the *Act* they are allowed to do so.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here has established a claim of \$1,150. After setting off the security deposit, there is no balance remaining. I am authorizing the Landlord to keep the security deposit full amount.

The Landlord was successful in this Application; therefore, I grant to the Landlord a Monetary Order for the amount of the Application filing fee; that amount is \$100.

What the Tenant raised as issues regarding repairs are irrelevant points in terms of their notice to the Landlord at the end of the tenancy which is what this Application was about.

Conclusion

I order the Landlord to keep the full security deposit amount. That is compensation to them for monetary loss.

I order the Tenant to pay the Landlord the amount of \$100 for the Application filing fee. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an order of that court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 13, 2023

Residential Tenancy Branch