



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord made an application for a Monetary Order for unpaid rent, money owed for damage or loss under the Act, regulations or tenancy agreement, to keep the security deposit and recover the filing fee. The tenants made an application for return of their security deposit. Both parties were adequately represented at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Are the tenants obligated to pay rent and utilities to the landlord for the month of September 2008?
2. Whether the security deposit shall be applied to any amounts owed to the landlord or returned to the tenants.
3. Award of the filing fee.

Background and Evidence

The tenancy commenced November 15, 2007. A tenancy agreement was executed by the tenants and a representative from the property management company hired by the landlord (the property manager) on November 16 and 17, 2007. The tenancy agreement provides that monthly rent is \$1,500.00 and the length of the tenancy is not indicated on the standard tenancy agreement; however, there are 4 pages of an Addendum with 39 additional terms that form part of the tenancy agreement. The

Addendum was signed by the tenants on November 17 and 19, 2007. The Addendum provides that the term of the tenancy is November 15, 2007 through November 14, 2008 but that the agreement may be sooner terminated by either party by giving 60 days written notice or if the tenant does not give 60 days written notice the tenant will have to pay a "penalty equal to one month's rent of \$2,000 payable to the owner". Included with the Addendum pages is a *Mutual Agreement to End a Tenancy* signed by the parties at the commencement of the tenancy, but not dated and without an effective date.

The parties were in agreement that at the end of July 2008 the tenants gave the property manager verbal notice that the tenants would be ending their tenancy; however, the parties were not in agreement as to the effective date provided by the tenants with the verbal notice. The tenant submitted that he told the manager that they were immediately seeking alternative accommodation and that meant they would be ending the tenancy at the end of August 2008 as he was of the opinion the tenancy was on a month-to-month basis.

The landlord was of the position that the verbal notice was ending the tenancy at the end of September 2008 in accordance with the terms of the Addendum to the tenancy agreement. As evidence, the landlord provided a written statement of the property manager, dated September 2, 2008 whereby the property manager states that the tenants had given 60 days notice to end the tenancy at the end of September. The statement also indicates that the landlord informed the property manager on August 21, 2008 that the landlord secured a new tenant for October 1, 2008. The manager's statement also provides that the tenants informed the manager on August 27, 2008 that they had found new accommodation and would be vacating for September 1, 2008.

The parties were in agreement that the tenants had paid a \$750.00 security deposit and a \$500.00 pet deposit. The landlord has returned \$400.00 of the pet deposit, plus

interest, with the tenant's consent to retain \$100.00 from the pet deposit for electricity charges for the month of August 2008.

The tenants vacated and participated in a move-out inspection with the property manager on September 1, 2008. The landlord re-rented the rental unit for October 1, 2008. The landlord is seeking loss of rent for the month of September 2008 in the amount of \$1,500.00 and \$145.00 for estimated utility costs for the month of September 2008.

The tenant was of the position that they had to vacate the rental unit because the landlord informed the tenants that she was going to use a portion of the basement for storage but the tenants did not agree as they needed that space for their own use. Although the property manager prepared a clause regarding the landlord's use of storage space in the basement in the Addendum, the clause was altered when the parties signed the Addendum and it is unclear from the wording in the Addendum what the parties agreed to with respect to the landlord's use of storage space in the basement. The tenant was also of the position that the landlord did not rent the rental unit for September 2008 despite the tight rental market and decided to wait for a particular tenant for the month of October 2008. The tenant does not agree with compensating the landlord for loss of rent for the month of September. The tenant also submitted that he maintained and even improved the appearance of the property for which he was not compensated.

Analysis

Section 13 provides that a tenancy agreement must provide for certain information, including the length of the tenancy. Section 13(2)(f)(iii) provides that the tenancy agreement must indicate

- (iii) if the tenancy is a fixed term tenancy,

- (A) the date the tenancy ends, and
- (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;

Upon further review of the terms of the Addendum and the tenancy agreement, I find that the tenancy agreement and the Addendum do not comply with the requirements of the Act with respect to the length of the tenancy since the agreement does not indicate the fate of the tenancy after November 14, 2008 as required under paragraph (B) above. The provision that the tenant pay a penalty for failure to provide at least 60 days written notice is also inconsistent with the tenancy agreement, as one month's rent is not equal to \$2,000.00 and the Act does not permit a landlord to charge a tenant a penalty. Therefore, in accordance with section 6(3) of the Act, the clause in the Addendum with respect to the "Term" of the tenancy is not enforceable as the clause is inconsistent with the Act.

As I have found the clause in the Addendum with respect to the "term" to be unenforceable, I find the insufficient evidence of a fixed term tenancy and I will treat this tenancy as a month-to-month tenancy.

Where verbal terms are clear and in situations where both the landlord and tenant agree what was conveyed in the verbal dialogue, I would have little reason to interfere with the terms so agreed upon. However, where certain terms and expectations are verbally established between the parties, these terms are always at risk of being perceived in a subjective way by each individual. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise. Then a Dispute Resolution Officer will have no choice but to base deliberations on provisions

contained in the Residential Tenancy Act by default and not on the purported verbal agreement.

Under the Act, a tenant may end a month-to-month tenancy by giving written notice to the landlord with an effective date that is at least one month after the notice is given. In this case, the tenant did not provide written notice; therefore, the tenants failed to meet their obligation under the Act to provide written notice. Failure to provide written notice is in non-compliance with the requirements of the Act.

Where a party does not comply with the Act, section 7 of the Act provides,

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Had the tenant established that the landlord knew that the tenancy would be ending at the end of August 2008 I would expect the landlord to make every effort to rent the unit for September 1, 2008. However, relying upon verbal terms alone, the tenant has not sufficiently demonstrated that the landlord had accepted the tenant's notice to end the tenancy on August 31, 2008. Since the tenant was ending the tenancy, the onus was upon the tenants to end the tenancy in accordance with the requirements of the Act by providing written notice with an adequate effective date.

Although the tenants felt compelled to end the tenancy early because the landlord wanted to use part of the basement for storage, I cannot reconcile why the tenant did

not provide written notice to end the tenancy. I also find that the tenants had other options available to remedy the dispute between the landlord and tenants with respect to the storage clause contained in the Addendum, such as making an Application for Dispute Resolution.

Without a written notice from the tenants with a clear effective date of August 31, 2008, I am satisfied that the landlord was not in a position to secure new tenants for September 1, 2008 and that the landlord acted reasonably to minimize the landlord's loss by finding new tenants for October 1, 2008. Therefore, the landlord is entitled, under the law, to recover the loss of rent of \$1,500.00 from the tenants.

As the tenants were not residing in the rental unit for the month of September 2008 and the landlord did not provide sufficient evidence to demonstrate the landlord's cost of utilities, I do not award the landlord utility costs for the month of September 2008.

With respect to the tenant's submission that the tenants made improvements to the property, repairs made by the tenant may be recoverable from a landlord if they meet the definition of "emergency repairs" as defined in the Act. Otherwise, improvements made voluntarily by a tenant are presumed to be for the tenant's own comfort and enjoyment of the property. Of course, a landlord may offer compensation to a tenant but I cannot force it upon landlord where it is not an "emergency repair".

As the landlord is entitled to recover loss of rent in the amount of \$1,500.00 from the tenants, I authorize the landlord to retain the tenant's security deposit and accrued interest in the amount of \$761.19, in partial satisfaction of this decision. As I have evidence before me that the landlord attempted to settle this matter previously for a lesser amount, to which the tenants did not agree, the landlord is also awarded the filing fee. The landlord is provided with a Monetary Order calculated as follows:

Loss of rent – September 2008	\$ 1,500.00
Filing fee	50.00
Less: security deposit and interest	<u>(761.19)</u>
Monetary Order	<u>\$ 788.81</u>

The landlord must serve the Monetary Order upon the tenants and may enforce payment in Provincial Court (Small Claims).

As the tenants' security deposit has been applied to the amount owing to the landlord, the tenants' application is dismissed without leave.

Conclusion

The landlord was successful in establishing a claim for unpaid rent and recover of the filing fee. The landlord was provided with a Monetary Order for \$788.81 and authorized to retain the tenants' security deposit and accrued interest.

As the landlord has authorization, by way of this decision, to retain the tenants' security deposit, the tenants' application for return of the security deposit is dismissed.

November 12, 2008

Date of Decision