



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to the return of rent paid?

Background and Evidence

The parties agreed that the tenant moved into the rental unit on September 5, 2008 and vacated the rental unit on September 6, 2008 and that she paid \$800.00 in rent for the month of September and a \$400.00 security deposit. The parties further agreed that the rental unit is a basement suite of a home in which the upper floor and a second suite on the lower floor are occupied by other tenants. The parties further agreed that at the start of the tenancy the landlord assured the tenant that smoking was not permitted anywhere inside the residential property and that while the other tenants smoked, they did so outside. By way of a money order dated October 8, 2008, the landlord returned the tenant's security deposit.

The tenant testified that she spent the night in the rental unit on September 5 and that she determined that one of the other tenants was smoking indoors. The tenant further testified that as she is extremely sensitive to smoke, she determined that she could not remain in the rental unit. The parties agreed that on September 6 the tenant telephoned the landlord to advise that she would not be continuing her tenancy. The tenant vacated the rental unit on September 6 and on September 9 sent the landlord an email advising him in writing the reasons why she was not continuing her tenancy.

The landlord expressed frustration that the tenant immediately ended the tenancy

without giving him an opportunity to speak with the other tenants to determine whether they were smoking inside the house. The landlord testified that while the other tenants in the rental unit smoke, they have never to his knowledge smoked inside the house. The landlord further testified that a new tenant has moved into the rental unit and has told him that no smoking has occurred inside the house.

The tenant testified that she had been concerned that the \$800.00 rent payable on the rental unit would be more than she could afford and acknowledged that she had on several occasions asked the landlord to reduce the rent. The tenant testified that she is paying less rent at the location in which she is now living. The landlord alleged that the tenant's real reason for ending the tenancy was because she could not afford the rent.

Analysis

I understand from the tenant's argument that she takes the position that the landlord breached a material term of the tenancy, which permitted her to end the tenancy without the one month notice that is usually required. Section 45(3) of the Act provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the tenant failed to give the landlord written notice of the failure prior to ending the tenancy, thus depriving him of an opportunity to correct the alleged breach of the material term. Accordingly I find that the tenant was not entitled to end her tenancy in the manner in which she did and find that she is not entitled to recover rent paid for the month of September.

While the parties agreed that the landlord refunded the tenant's security deposit on October 8, it is clear that the landlord did not do so until well after the tenant had applied for dispute resolution for the return of the security deposit. I find that as the application for dispute resolution prompted the landlord to return the security deposit, the tenant is

entitled to recover the \$50.00 filing fee paid to bring the application.

Conclusion

The tenant has established a claim for \$50.00 and I grant the tenant an order under section 67 for that sum. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 29, 2008.