



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for return of her security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement. The tenant named the property manager and the owner of the property in making her application. The property manager attended the hearing; however, the owner of the property did not appear. I was not satisfied that the tenant had sufficiently served the owner with notification of this hearing. Accordingly, I amend the application to remove the name of the owner. Both parties in attendance at the hearing were provided an opportunity to be heard and respond to the other party's submissions.

Issues(s) to be Decided

1. Whether the tenant has established an entitlement to return of her security deposit.
2. Whether the tenant is established to compensation for damage or loss under the Act, regulations or tenancy agreement.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings. The landlord and tenant met on December 11, 2008 to view the rental unit. On December 12, 2008 the parties signed a month to month tenancy agreement with a possession date of January 1, 2009. The tenant paid a \$500.00 security deposit on December 12, 2008 and provided the landlord with rent for January 2009 rent in the amount of \$950.00. The landlord cashed the tenant's January 2009 rent cheque. The tenant left a telephone message for the landlord on January 6, 2009 to advise him that she would not be moving in to the rental unit. On January 10, 2009 the tenant provided the landlord with

written notice that she would not be taking possession of the rental unit. The landlord returned the tenant's security deposit on January 27, 2009.

The tenant is seeking to recover rent of \$950.00 that she paid for January 2009. As the tenant has received her security deposit, its return is no longer an issue. The tenant testified that she entered in to the tenancy agreement conditional upon the replacement of the fridge and stove and countertops. In addition, the ceiling was to be painted. In December 2008 the tenant asked the landlord if it would be an issue to get keys to the rental unit on January 1, 2009 since it was a statutory holiday. The landlord indicated that this would not be an issue. The tenant claimed that her intention was to move boxes in to the rental unit in early January and move her furniture in on January 10, 2009. The tenant did not hear from the property manager on January 1, 2009 and on January 2, 2009 tried to phone him. The tenant was advised that the property manager had left for the day. On January 3, 2009 the tenant phoned the maintenance man as his name and phone number appeared as an emergency contact on the tenancy agreement. The maintenance man told the tenant that he was unaware of her tenancy and confirmed that repairs had not been made to the rental unit. On January 6, 2009 the tenant spoke with the maintenance man again who confirmed that he had not yet been instructed to complete work in the rental unit. Later that same day, the tenant tried to contact the property manager again and could not so the tenant left a message with the receptionist that she would not be taking the rental unit.

The property manager testified that upon meeting with the tenant on December 11 or 12, 2008 the property manager told the tenant that he would consider replacing the countertop. The property manager stated that he promised to replace the stove if it was not able to be cleaned up. The property manager testified that the tenant informed him that she would be retaining her existing accommodation during the month of January 2009 and that the tenant did not intend to move in until January 10, 2009 so the

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manager was of the understanding that the necessary work could be done at any time before January 10, 2009. The property manager stated that the countertop was in fact replaced, the ceiling painted and the stove cleaned in early January 2009. The manager acknowledged that he was out of the office until January 5, 2009 and that the maintenance man is not made familiar with the terms of the tenancy agreement as that is not the maintenance man's role.

The tenant also alleged that the manager had told her that he would be able to perform the repairs in late December 2008 as the former tenant had moved out early; however, the manager claimed that he told the tenant he would do the repair work in December 2008 if the former tenant gave up possession of the rental unit early, which the former tenant did not do.

Neither party provided a copy of the tenancy agreement as evidence for the hearing. Both parties agreed; however, that the tenancy agreement did not contain any terms with respect to the repair work described during the hearing.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenancy take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Upon hearing undisputed testimony of the parties, I find that the tenancy agreement was entered into on December 12, 2008.

In addition to standard terms required in a tenancy agreement, landlords and tenants may agree to and include other terms in the tenancy agreement. Terms must be in writing, comply with the Act and clearly communicate the rights and obligations under the term. Upon hearing undisputed testimony of the parties, I do not find that the

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requirement to complete specific repairs to the rental unit by a certain date was part of the written tenancy agreement signed by the parties. Nor did I hear sufficient evidence to find that the rental unit was uninhabitable without completion of the repairs.

Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can be enforced. That being said, it is evident that, in relying on memory alone, the parties may end up interpreting verbal terms in drastically different ways. Where certain issues 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. Accordingly, 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.

I do not find sufficient evidence that the landlord breached the Act or tenancy agreement with respect to the completion of certain repairs. However, I find the landlord breached the tenancy agreement by failing to provide the tenant with possession of the rental unit when she was entitled to possess it. Since the tenancy agreement provided that the tenant was to have possession on January 1, 2009 the tenant had entitlement to obtain the keys upon requesting them at any time after noon on January 1, 2009. Although the property manager cannot be expected to be in the office at all times, the property manager, or a delegate should be reachable by a tenant. Considering the property manager knew of the tenant's entitlement to possession and she had not yet been provided keys, the property manager should reasonably have



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expected that the tenant would seek the keys and should have made sufficient plans to accommodate her request in his absence.

Since I find the landlord to have breached the tenancy agreement by failing to provide the tenant with possession of the rental unit, I grant the tenant's application to recover the rent she paid for January 2009.

Enclosed for the tenant is a Monetary Order in the amount of \$950.00. The tenant must serve the landlord with the Monetary Order and may enforce it in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenant is provided with a Monetary Order in the amount of \$950.00.

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: April 09, 2009.

Dispute Resolution Officer