



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and each gave testimony in turn.

Issue(s) to be Decided

The landlord is seeking a monetary order claiming unpaid rent of \$825.00 for the month of April 2009. The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The landlord stated that the tenant signed a month-to-month tenancy agreement to commence on February 1, 2009. The rent was set at \$825.00 per month and on January 12, 2009 the tenant paid a security deposit of \$412.50. However, the tenant did not move in to the suite. The landlord testified that on March 27, 2009 the tenant gave notice to move which under the Act would be effective on April

30, 2009. The landlord testified that the tenant failed to pay rent for the month of April 2009. The landlord incurred a loss and is seeking \$825.00 in compensation for the unpaid rent.

The tenant testified she had been forced to move from her previous residence due to sensitivity to cigarette smoke and she agreed to rent this unit in good faith. The tenant testified that the landlord was aware that the tenant had serious sensitivities to environmental pollutants. The tenant testified that she had to pay rent on both units during the month of February 2009. When the tenant attended the suite in preparation for moving in, she discovered that the floors had been treated with some kind of noxious oil that caused a medical reaction. The tenant testified that the landlord agreed to remove the oil. However after more fumes occurred from painting and a furnace malfunction the tenant found that she was not able to remain in the unit at all due to health issues.

The tenant testified that she was forced to move and had all of her possessions out by the end of March.

The tenant stated that she was operating under the belief that the landlord would allow her to leave with no further monetary consequences because of the circumstances. The tenant stated that she had been assured that the landlord would be able to re-rent the unit without a problem. The tenant testified that she too incurred a substantial loss in this venture, having paid rent for February and March on a residence that she was unable to stay in and which aggravated her medical condition. The tenant stated that she was surprised to find that the landlord was seeking compensation for rent for the month of April. The tenant testified that she thought everything had ended on reasonable terms and she had requested the return of her security deposit. The tenant stated that she was also not aware that she could make an application to dispute resolution in regards to any of the tenancy issues she encountered.

Analysis

Section 26 of the Act requires that a tenant pay rent **when it is due** under the tenancy agreement, **whether or not the landlord complies with this Act**, the regulations or the tenancy agreement, **unless the tenant has a right under this Act to deduct all or a portion of the rent**.

In this instance, under the Act and the agreement signed by the tenant, the rent for April was due on April 1 and was not paid. I find that, regardless of whether or not the landlord was in violation of the Act in other respects, the Act states that the tenant is still obligated to pay rent. The only way the tenant would have a right not to be liable for rent is if the tenant had made a successful application for dispute resolution and obtained an order for a rent abatement or monetary compensation for damages caused by the other party's violation of the Act.

In this instance, the landlord proved that it incurred a loss. I do not find that there was an agreement made between the parties or any promise by the landlord waiving payment of the rent for April. In any case, to rely on a representation of this nature, I find that it must be in writing.

Under section 45 of the Act, a tenant is entitled to terminate a month-to-month tenancy for any reason, but must follow the proper procedure by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Section 45(4) states that *"A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy]."*

Section 52 requires that a notice to end a tenancy must be in writing and must (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, and (c) state the effective date of the notice.

I find that the tenant did not provide adequate written notice as required under the Act, to validly end the tenancy as of April 1, 2009. I find that despite the tenant's failure to provide proper notice, the landlord did accept that the tenancy

would be ending based on conversations with the tenant and the tenant's note to the landlord near the end of March. However, the landlord followed the Act in setting the end date for on April 30, 2009. I find that the tenant's expectation that she would not be liable for paying rent for the month of April 2009 was an assumption that was not based on the provisions of the Act.

That being said, a mediated discussion ensued and the landlord agreed to accept retention of the \$412.50 security deposit instead of pursuing the claim of \$825.00 for rent owed. In exchange the tenant also made a commitment to accept this compromise as full settlement of current and future claims in regards concluding the tenancy agreement between these parties.

Conclusion

Accordingly I order that the landlord retain the security deposit and interest of \$412.50 in full satisfaction of the landlord's claim and based on the tenant's agreement that this resolves and concludes all past and future claims arising out of this tenancy relationship.

June 2009

Date of Decision

Dispute Resolution Officer