

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her pet deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 24, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord was deemed to be served the hearing documents on April 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under Sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began October 1, 2008, set to expire on September 30, 2009, with rent payable on the first of each month in the amount of \$1,500.00. The Tenants paid a security deposit of \$750.00 on September 12, 2008 and a pet security deposit totalling \$750.00 with \$375.00 paid on September 12, 2008 and \$375.00 paid on October 1, 2008.

The Landlord did not conduct a move-in or a move-out inspection report. The Landlord argued that she cannot complete the move-out inspection because the Tenant still has possessions in the rental unit.

The Tenant testified that she had a verbal discussion with the Landlord around mid-January 2009 to inform the Landlord that the relationship between the three tenants had broken down to the point where the Tenant felt she could no longer reside with the other two tenants. The Tenant argued that the Landlord was in agreement to the Tenant ending the fixed term lease, that the Landlord would enter into a new lease with the remaining two tenants, and that the Landlord agreed to allow the Tenant to end her tenancy as of February 28, 2009.

The Tenant provided documentary evidence which consists of copies of e-mails whereby she communicated with the Landlord and two tenants of the agreement mentioned above.

The Tenant testified that she entered into a tenancy agreement elsewhere based on the e-mail communications with the Landlord which the Tenant stated confirmed that she was being written out of the existing fixed term lease and confirmed that the pet deposit was paid by the Tenant and was to be returned to the Tenant.

The Tenant argued that she sent the Landlord her forwarding address, in writing, via registered mail on March 19, 2009. The Landlord confirmed receipt of the written forwarding address on March 20, 2009.

The Landlord argued that she did not receive proper written notice to end the tenancy from the Tenant, as the Landlord was informed by an Information Officer at the *Residential Tenancy Branch* that e-mail communication does not constitute proper written notice.

The Landlord testified that the relationship between the three tenants had broken down to the point where the Tenant had to move out and the Landlord argued that she wrote

the e-mails to assist the tenants to come to a resolution as amicably as possible but that it was not her intention to let the Tenant out of the fixed term lease unless there was another tenant to be added in her place.

The Landlord stated that she had a telephone conversation with the Tenant the week before February 28, 2009 informing the Tenant that a replacement tenant had not been found so the Landlord was not going to allow the Tenant out of her fixed term lease.

The Landlord argued that she had a meeting with all three tenants on February 28, 2009 whereby the Landlord informed all three tenants that they would be responsible for their share of the rental unit.

The Tenant argued that the meeting put her in a volatile situation, in the presence of the Landlord, the two tenants she wasn't getting along with, some of their parents, and the property manager and that she told the parties that she would have to see about paying her portion of the rent as she had committed to renting the other place.

The Landlord advised that the Tenant had requested a second meeting immediately following the first meeting, that this meeting took place at a local coffee shop, and that the Landlord had her property manager attend the meeting as the Landlord's witness. The Landlord claimed that the Tenant verbally agreed again, at this second meeting, to pay the Landlord her portion of the rent.

The Tenant argued that she did not agree to pay her share but that she said "I will see what I can do" and that the Tenant spoke about maybe making split payments.

The Landlord stated that the Tenant's recollection is not what had happened. The Landlord confirmed that she did not provide any affidavits from her witness and that her witness was not available to call into the hearing.

The Landlord claims that the Tenant has not fully moved out of the rental unit, that she has not returned the key to the rental unit, and that the Landlord had to pay to have the locks changed for the existing two tenants.

The Tenant testified that she has not lived in the rental unit since towards the end of January 2009 that she removed her possession, all except a TV Stand and two plastic chairs, on or before February 28, 2009.

The Tenant stated that early March 2009 she received a telephone call from one of the other tenants to advise her that there was mail at the rental unit for her and that the tenant requested that the key be returned. The Tenant stated that she went to the rental unit, early March 2009, picked up her mail from the mail box and left the key in the mailbox as requested by the other tenant.

The Tenant argued that because she had returned her key she could not attend the rental unit to pick up her table and two chairs without the presence of one of the other tenants so when she called to make arrangements to pick up these items she was told that she could not have access to them until she paid the one tenant money that the Tenant owed her. The Tenant stated that she was not given permission to pick up her items until June 2009.

The Landlord argued that the Tenant has other possessions remaining at the rental unit such as a barbeque and boxes in the garage.

The Tenant stated that the remaining items were given to the other two tenants. The Tenant argued that she had lived with one of the other tenants for over two years and that they had jointly purchased some of the furniture and possessions and that the three tenants had agreed that the Tenant would leave the barbeque and other items for the other tenants to keep.

The Landlord stated that it was her interpretation that the security and pet deposits were to be held by the Landlord until the end of the fixed term tenancy and that because the

Landlord had no previous discussion about which tenant paid which deposit she would retain both deposits until the end of the original fixed term.

The Landlord advised that there is damage in the Tenant's room and damage caused by the Tenant's cat.

The Landlord advised that she has entered into a new month to month tenancy with the remaining two tenants as of June 1, 2009.

Analysis

In reviewing the documentary evidence before me in response to the Landlord's claim that the Tenant failed to provide proper written notice to end tenancy, I find that the Landlord acted on both the verbal and e-mail notices provided by the Tenant to end the tenancy early, and that in doing so the Landlord has waved her right to require formal written notice to end tenancy.

I also find that the Landlord not only accepted the Tenant's notice, she agreed to amend the existing notice and took action to do so when she advised all of the tenants, in written e-mail communication January 30, 2009, that the Tenant "will be signed out of the lease on Feb. 28, 2009. She will pay her \$500.00 for Feb. rent" Based on the aforementioned I find that the Tenant's lease ended, by mutual agreement with the Landlord, on February 28, 2009.

The Landlord states that she had a witness to the Tenant's verbal agreements from the February 28, 2009 meetings, whereby the Tenant allegedly agreed to continue to pay the Landlord rent and that this agreement continues the tenancy agreement until the end of the fixed term, however the Landlord did not provide affidavits from the witness and the witness was not able to be added into the hearing, in support of the Landlord's statements. The Tenant argued that she did not agree to continue to pay the rent.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms can

not be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Based on the aforementioned I dismiss the Landlord's claim that there was a verbal agreement that the Tenant would continue to pay rent.

The Landlord states that there was no initial discussion as to who paid the security and pet deposit and that the Landlord's interpretation was that she would be entitled to keep both deposits until the end of the original fixed term. The *Residential Tenancy Policy Guideline #13* states in regards to the rights and responsibilities of Co-tenants regardless of who paid the deposits, any tenant who is a party to the tenancy agreement to which the deposit applies may apply for arbitration for return of the deposit. I also note that in the e-mail communication issued by the Landlord to all three tenants on February 5, 2009, the Landlord has clarified and received confirmation from the remaining two tenants that the pet deposit would be returned to the Tenant.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage.

Based on the above, I find that the landlord has failed to comply with Section 38(1) of the *Act* and that the landlord is subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit. I find that in this situation the Landlord would have had to return the Tenant's pet deposit by April 4, 2009, the 15th day after she received the Tenant's forwarding address, in writing, on March 20, 2009. Based on the aforementioned I hereby find in favour of the Tenant's application for the return of double the pet deposit plus interest.

As the Tenant as been successful in her application I find that she is entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double the Pet Deposit 750.00 x 2	\$1500.00
Interest on \$375.00 from Sept. 12, 2008 of \$1.71 and interest on \$375.00 from Oct. 1, 2008 of 1.41	3.12
Filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,553.12

In regards to the Landlord's claims and evidence relating to damage to the rental unit I am not able to hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the landlord is at liberty to make her claims in a separate application.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$1,553.12. The order must be served on the Landlord and is enforceable through the Provincial Court as an order of that Court.

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: July 22, 2009.

Dispute Resolution Officer