



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, RP, FF

This decision is accompanied by an interim decision issued June 18, 2009 which is an integral part of this decision and both decisions are to be read together. The teleconference call of June 18, 2009 was adjourned for July 29, 2009 in order to accommodate the appearance of the landlord's agent referred to as "MS" who was out of the country on June 18, 2009. The tenant and MS appeared at the hearing reconvened on July 29, 2009 and were provided an opportunity to be heard and to respond to the other party's submissions.

Issues to be determined

1. Has the landlord established an entitlement to recover damages or loss from the tenant and retain the tenant's security deposit?
2. Is the tenant entitled to return of the security deposit?
3. Award of the filing fee.

Background

The tenancy commenced October 7, 2008 for a fixed term set to expire September 30, 2009. The tenant was required to pay monthly rent of \$800.00 and had paid a \$400.00 security deposit on October 7, 2008. The tenant vacated the rental unit March 31, 2009 and provided her forwarding address to the landlord on that date. The rental unit was re-rented for May 1, 2009.

The landlord is seeking to retain the tenant's security deposit in satisfaction of the loss of rent incurred for the month of April 2009 and applied to retain the security deposit within 15 days of the tenancy ending. The tenant is seeking return of her security deposit.

After much testimony during the two teleconference calls, the critical issues are when the tenant gave notice to end tenancy and whether the landlord accepted the tenant's notice.

The landlord submitted that on March 23, 2009 a telephone conversation took place with the tenant whereby the tenant was informed that at least one month of written notice was required to end the tenancy and that if no new tenants were found for April 2009 the tenant would be liable for the loss of rent.

The tenant submitted that she had been complaining about the drafty windows and condensation and that her hydro bill was too high but that the landlord did not sufficiently respond to the tenant's concerns. The landlord offered to take her to see another unit but when the landlord failed to show for the appointment. The tenant met with MS at the end of February 2009 and the tenant verbally told MS she would be vacating at the end of March 2009 and that MS verbally indicated that was acceptable.

MS could not recall the specifics of that conversation but acknowledged a conversation was likely had with the tenant about the time she indicated. MS stated he deals with several tenants on a daily basis and does not recall the specifics of each conversation but MS relied upon the landlord's policy to insist on written notice where a tenant indicates they wish to end a tenancy.

The tenant was able to provide very detailed information with respect to the conversation with MS at the end of February 2009 and claimed the landlord did not request written notice from her. The tenant also pointed out that MS failed to properly complete a move-out inspection report with her, despite her enquiry at the move-out inspection. The landlord stated it is policy to conduct move-out inspection reports; however, a report was not produced as evidence before the July 29, 2009 hearing date despite this issue raised at the June 18, 2009 hearing.

The tenant stated that MS did not request a written notice to end tenancy and that no showings to prospective tenants took place before she vacated. The landlord testified they advertised on Craigslist but did not provide documentation to show advertising efforts or dates advertisements were placed. The landlord also explained that several units in the building were vacant and rent has been reduced.

Analysis

Section 44 of the Act provides for the ways a tenancy ends. One of the ways a tenancy ends is by the tenant vacating the rental unit. A tenancy may also be ended by mutual agreement between the parties that is in writing. In this case, there was no mutual agreement to end the tenancy in writing; however, as the tenant vacated the rental unit on March 31, 2009 I find that the tenancy ended on that date.

Upon hearing the testimony of both parties, I accept the tenant's version of the conversation that took place between the tenant and MS at the end of February 2009 whereby the tenant gave verbal notice to end the tenancy as of March 31, 2009. In accepting the tenant's version of events, I find the landlord verbally conveyed to the

tenant during that conversation his acceptance that the tenancy would end as of March 31, 2009. With the landlord's acceptance the tenancy would end, the tenant took action to vacate the rental unit effective March 31, 2009.

I also find that by ending the tenancy as of March 31, 2009, the tenancy agreement was breached since the tenancy agreement was for a fixed term. If a landlord accepts that a tenancy will end and by ending the tenancy the tenancy agreement is breached, the tenant must be put on notice that the landlord intends to hold the tenant responsible for any loss of rent that results from the breach. Ideally, the tenant should be put on notice when the tenant gives notice. Based on the testimony of the parties, I find that the landlord did not put the tenant on notice of an intention to hold the tenant responsible for any loss of rent until a telephone conversation on March 23, 2009. Therefore, I find the tenancy agreement was breached and the tenant was put on notice of the landlord's intention to hold the tenant responsible for loss of rent while the tenant still had possession of the rental unit.

Section 7(2) of the Act provides that a party who claims compensation for damage or loss that results from another party's non-compliance with the tenancy agreement must do whatever is reasonable to minimize the damage or loss. The landlord did not provide any documentation to demonstrate the advertising efforts undertaken by the landlord to re-rent the unit. The landlord provided verbal testimony that the unit was advertised on Craigslist but did not provide specific dates. The tenant stated that there were no showings of the unit while she occupied the unit. In this case, although I have found a breach of the tenancy agreement by the tenant, I am not satisfied by the evidence before me that the landlord took sufficient action to minimize the loss of rent incurred for April 2009. Therefore, I deny the landlord's claim for loss of rent against the tenant.

As the landlord's claim against the tenant has been dismissed, I order the landlord to return the security deposit to the tenant, with accrued interest, forthwith. I provide the tenant with a Monetary Order in the amount of \$401.41, including interest of \$1.41, to ensure the landlord complies with this order.

To enforce the above order, the tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

I make no award for the filing fees paid for these applications as the landlord was unsuccessful and the tenant's application was unnecessary since the landlord had already made an application with respect to the security deposit when the tenant filed.



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Conclusion

The landlord's application was dismissed without leave to reapply. The landlord is ordered to refund \$401.41 to the tenant forthwith for the security deposit and accrued interest owed to her. Dismissing the landlord's application and ordering the security deposit returned to the tenant also resolves the tenant's application.

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: August 21, 2009.

Dispute Resolution Officer