Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order requesting return of the deposit paid, compensation for loss or damage and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence and to make submissions to me.

The tenant had three witnesses present, all of whom were asked to exit the hearing until they were required to testify.

Preliminary Matter

The tenant submitted a four page addendum dated September 3, 2009. This addendum increased the amount of compensation claimed by the tenant. The tenant did not complete an amended Application for Dispute Resolution. Section 2.5 of the Residential Tenancy Branch Rules of Procedure requires completion and service of any amendment to an application that is made prior to the hearing. During the hearing I determined that the tenant has failed to properly amend the application and rejected the September 3, 2009 addendum. The hearing proceeded based upon the application for dispute resolution completed on June 2, 2009.

The tenant's application for dispute resolution was amended during the hearing to reflect the correct name of the landlord, as it appears on the residential tenancy agreement signed by the parties.

At the start of the hearing it was determined that jurisdiction of this matter falls under the Residential Tenancy Act. The tenant testified that she had expected to sign a "rent to own" agreement, but that the parties failed to complete any such agreement and only entered into a tenancy agreement.

At the start of the hearing the tenant's application for dispute resolution was amended to reflect a claim for compensation made under section 67 of the Act; as outlined in the details of the dispute.

Issue(s) to be Decided

Is the tenant entitled to compensation for one half of April 2009 rent paid?

Is the tenant to return of double the deposit paid to the landlord?

Is the tenant entitled to compensation for damage to her vehicle?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant submitted as evidence a written residential tenancy agreement which indicates that the tenancy commenced on March 1, 2009. Rent was $1,200.00 per month, a security deposit and pet deposit totalling $1,200.00 was paid on January 27, 2009.

On April 6, 2009 the tenant sent the landlord an email stating that she would move out of the apartment by the end of the week. On the same date the landlord responded that they had a purchaser for the tenant's unit but that she could remain as a tenant. On April 15, 2009 the tenant emailed the landlord indicating that she had moved out of the rental unit.

The tenant testified that she had expected to enter into a "rent to own" agreement and that the failure of the landlord to allow her to enter into such an agreement essentially voided the tenancy. The tenant stated that the residential tenancy agreement signed was invalid as she had moved into the unit three weeks prior to March 1, 2009; thus rendering the agreement void.

The landlord testified that they had entered into a residential tenancy agreement and that on April 15, 2009 they became aware of the tenant's move from the rental unit.

During the hearing the landlord confirmed that on April 20, 2009 they received the tenant's forwarding address in writing. The landlord confirmed that they have not returned the deposits to the tenant, nor have they made application for dispute resolution. The landlord stated that on May 4, 2009 they asked the tenant to complete a move-out condition inspection. The landlord did not provide evidence of an offer of two attempts made requesting the tenant participate in a move-out condition inspection.

The tenant testified that the landlord has breached the intended purpose of her tenancy by their failure to sign a "rent to own" agreement. The tenant stated that this failure by the landlord released the tenant from the requirements provided under the Act, in relation to the provision of notice to end a tenancy and that she is entitled to compensation for the rent paid for the last two weeks of April.

The tenant testified that she had an assigned parking space for her four-wheel drive pick-up truck. The tenant is claiming compensation for damage that occurred to the roof of her truck due to scratches caused by an object suspended from the parkade ceiling. The tenant testified that she pulled into a parking spot near hers, so that she could back into her own parking space and that, as a result, the top of the cab of her truck was damaged by a metal joint hanging from the ceiling.

The tenant's witness stated that the signage in the parkade provided an inaccurate height warnings. The tenant's witness stated that the truck is approximately six feet, six and one half inches in height, while the parkade signage indicated that there was clearance of six feet, eight inches. The witness testified that other areas of the parkade had low clearance areas marked.

The tenant testified that she did obtain a claim number from her vehicle insurer, but did not have that claim processed. The tenant has provided repair estimates and has not yet had the repairs completed.

The landlord responded that the signage is a guideline and that individuals parking in the parkade must use caution. The landlord stated that parking is the responsibility of the strata and that the management services company named in the tenant's application for dispute resolution are responsible for strata common areas. On April 30, 2009 the strata property manager emailed the tenant indicating that the City sets the height requirements used in the parking area and that those individuals who have vehicles that are close to height restrictions should use caution when driving in the parkade.

Analysis

I find that the tenant is entitled to return of double the deposits paid, plus interest. Once a tenant provides the landlord with a written forwarding address, within 15 days the landlord must either return the deposit paid or make an application for dispute resolution. Section 35(2) of the Act requires a landlord to provide the tenant with at least two opportunities to complete a move-out condition inspection; there is no evidence before me that the tenant was provided with two opportunities. Therefore, as provided under section 38(6) of the Act, the landlord must pay the tenant double the deposits held in trust.

I find that the tenant is not entitled to recovery of any rent paid in April. Even if this fixed-term tenancy were a month-to-month tenancy, the tenant has failed to provide the landlord with proper written notice to end the tenancy. Section 45 of the Act provides that a month-to-month tenancy requires written notice at least one day prior to the day in the month rent is due. A fixed-term tenancy can not be ended prior to the end date of the agreement unless there is a mutual agreement made in writing.

The tenant has requested compensation under the Residential Tenancy Act, yet has argued that her tenancy agreement was invalid. I do not accept this argument and find that this was a tenancy, that the tenant lived in the rental unit, paid rent as required

under the agreement and, due to the inadequate notice to end tenancy provided to the landlord, is not entitled to return of any rent paid for April 2009.

In relation to the tenant's claim for damages to her pick-up truck, I find that this claim is dismissed without leave to reapply. The tenant has driven a pick-up truck into a parking stall that was not assigned to her and as a result her truck suffered scratches to the roof of the cab. I accept the landlord's testimony that a clear allowance of less than two inches would call for caution when moving a truck within a parking area marked as having minimal clearance and that, on the balance of probabilities, the tenant has failed to exercise appropriate caution.

The landlord is holding in trust deposits, plus interest, in the sum of $1,216.72.

As the tenant's claim has merit I find that the tenant is entitled to filing fee costs.

Conclusion

I find that the tenant is entitled to return of double the deposits paid in the sum of $2,416.72.

I find that the tenant has established a total monetary claim of **$2,466.72** comprised of double the deposit, interest and the $50.00 fee paid for this application and I grant the tenant an order under section 67 for that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I dismiss without leave to reapply the tenant's claim for return of rent paid and damages to her vehicle.

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: September 11, 2009.

Dispute Resolution Officer