



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

Introduction

1) This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following:

- A Monetary Order for the return of the remaining portion of tenant's security deposit or rent paid

Issue(s) to be Decided

- Is the tenant entitled to a refund for deposit paid?

Background and Evidence

The Tenant testified that an agreement was made for the tenant to move into the unit in on July 1, 2009 and a security deposit was paid in the amount of \$835.00. However, the tenant's roommate could not move in on the date planned and the tenant discussed this problem with the landlord. The tenant testified that the landlord proposed an alternate roommate but the tenant was not sure about this person. According to the tenant, she had the impression that the landlord was fine with allowing her original roommate to move in a month late and told her not to worry, just pay and they will figure it out. However, according to the tenant, the landlord called just prior to the move-in date and advised the tenant that he was making changes to the original contract by dividing up the unit and adding another renter. The tenant stated that she then decided not to proceed with the tenancy agreement that she signed because of the alarming

changes imposed by the landlord. The tenant stated that she attempted to get her money back, but the landlord pressured her to sign an agreement accepting the return of only \$400.00 and giving the landlord permission to retain the remainder in exchange for cancelling the contract. This document was in evidence. The tenant feels that she is still entitled to the full return of her deposit.

The landlord testified that the tenant had signed to move in, and paid the deposit in partial instalments and one cheque for \$100.00 had failed to clear. The landlord testified that the tenant contacted the landlord about problems with her proposed co-tenant and the landlord suggested a possible roommate to assist. The landlord denied suggesting that he was going to divide up the space and add another tenant. The landlord testified that just prior to the move-in date, the tenant decided not to take the unit at all and asked for her \$835.00 deposit back. The landlord testified that by that time he had lost potential tenants who would have moved in if he had known that the tenant was going to renege on the contract. The landlord testified that in order to help the tenant he refunded part of the deposit and agreed to cancel the fixed-term contract without further claim in exchange for keeping the remaining \$435.00 deposit.

Analysis

The burden of proof is on the claimant to first establish and verify a claim for compensation.

Based on the testimony, I find that:

- The parties made an agreement for the tenant to reside in the unit starting July 1, 2009.
- The tenant paid \$835.00 deposit
- The tenant first attempted to alter the terms of the contract in regards to the date that the original roommate was going to move in

- The landlord later attempted to alter the terms of the contract in regards to the layout of the unit and the number of occupants
- Because of landlord's actions, the tenant decided not to move in and hoped to have her money returned in full
- The parties made a written agreement that the tenant would be refunded \$400.00 and the landlord would keep the rest for ending the contract.

Section 1 of the Act contains a definition of "*tenancy agreement*" which includes an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities. I find that the agreement between these two parties meets the definition of a tenancy agreement.

Section 16 of the Act specifically states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this instance, even though the tenant did not move in at all, a tenancy had been created and all of the rules in the Act and agreement would now be in force.

In regards to rent to be paid by the tenant, section 26 provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. In this situation, as of July 1, 2009, the first month's rent was owed to the landlord and would have been due and payable.

In regards to changes to a tenancy agreement, section 14(2) of the Act states that a tenancy agreement may only be amended to add, remove or change a term, if both the landlord and tenant agree to the amendment. In this instance, the tenant and the landlord each made verbal attempts to unilaterally alter the agreed-upon terms of the existing tenancy agreement signed on June 7, 2009 before the tenant moved in.

While I do accept the tenant's testimony that she genuinely found it impossible to continue with the tenancy under the circumstances, neither party has a right to merely cancel the contract unless both agree. Without the landlord's consent to eliminate the contract, the tenant would have been held to the six-month obligation and the costs involved.

In this instance I find that the parties reached a clear compromise. The arrangement ensures that the landlord does not make a future claim against the tenant for the loss of rent that may have been otherwise owed due to the tenant defaulting on the contract.

In any case, I find that the tenant freely signed both the original tenancy agreement as well as the second agreement to forfeit part of the deposit in order to cancel the tenancy. There would be no reason under the Act to set either of these contracts aside.

Conclusion

Given the testimony and evidence provided by the applicant in this dispute, I find that the tenant's application must be dismissed in its entirety without leave to reapply.

December 2009

Date of Decision

Dispute Resolution Officer