Decision

Dispute Codes:

MNSD Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord to retain the security deposit and a monetary order for loss of rent stemming from the tenant ending the tenancy without proper notice under the Act.

Both the landlord and tenant were present and each gave testimony in turn.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent due to the tenant not complying with the tenancy agreement by moving in and paying rent on the date specified giving the required amount of notice to end the tenancy causing the landlord a loss of rent for the month commencing October 15, 2009 until November 15, 2009.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rent owed under the agreement
- Whether the landlord is entitled to retain the $600.00 deposit in partial satisfaction for the rent owed s of rent.

Background and Evidence

Both parties agreed that a tenancy agreement was signed in September for a tenancy that was scheduled to start on October 15, 2009 with rent set at $1,200.00 and a deposit of $600.00 paid by the tenant. The landlord submitted into evidence a copy of

the tenancy agreement which was crossed out on each page and a notation on the first page stating: "*THIS AGREEMENT IS VOID AND NULL*"

The landlord testified that the rental unit was under renovation which would be completed on October 15, 2009, at which time the tenant was to move in. According to the landlord, on October 9, 2009, the tenant called more than once requesting that he be permitted to move some items into the unit and the landlord agreed that some boxes could be moved in if they were stored out of the way being that renovations were still in process. The landlord stated that the tenant was insistent that he be given a key and the request was refused. The landlord testified that it became clear that the tenant actually intended to move into the unit early and the landlord was not willing to permit this as the renovations would not be finished until the date specified in the contract, October 15, 2009. The landlord testified that the parties met and it was determined that the agreement would be cancelled. The landlord stated that it was his understanding that the tenant would still owe $1,200.00 rent for the period from October 15, 2009 to November 14, 2009 and that the tenant's deposit would cover half the amount owed, the remainder of which must still be paid. The landlord was seeking $1,200.00 in compensation plus $50.00 for filing the application.

The tenant testified that his request to move in on the long weekend of October 10 was initially accepted by the landlord and he prepared to move in on that date. However, according to the tenant, the landlord then reneged on this verbal agreement and refused to allow the early move-in date. The tenant testified that the parties were at an impasse and the landlord agreed to cancel the tenancy agreement signed by the parties and crossed out each page. The tenant's understanding was that the tenancy would never start and the security deposit would therefore be returned in full.

Analysis

Section 16 of the Act provides 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.

Section 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute.

In this instance I find that the parties entered into a written agreement which stated that the tenant would take possession on October 15, 2009. I find that a subsequent verbal agreement was apparently reached which either permitted early storage of the tenant's possessions or permitted earlier occupancy of the tenant and his family, depending on which party's testimony is accepted.

I find that the fact that this was a verbal agreement does not invalidate it. Oral terms in an agreement may still be recognized and enforced. Section 1 of the Act, defines "tenancy agreement" as follows:

> *"tenancy agreement" means 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, and includes a licence to occupy a rental unit.*

However, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In the case of verbal agreements such as the purported oral agreement made between these parties, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, as in

this case, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen. In other words, the terms in question are not clear and therefore under section 6(3) cannot be enforced.

Given the above, I find that the only clear terms in this regard are those contained in the written tenancy agreement and they must be enforced under the Act. The agreement stated that the tenancy would start on October 15, 2009. Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that under the agreement rent of $1,200.00 would be owed on October 15, 2009.

In regards to the tenant's testimony that on or around October 10, 2009, he chose to end the tenancy, I find that a tenant is at liberty to terminate the tenancy but must do so in compliance with the Act or liability may follow.

Ending a tenancy is covered by section 44(1) of the Act which states that a tenancy ends only if one or more of the following applies:

> (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following: (i) section 45 *[tenant's notice]*;(ii) section 46 *[landlord's notice: non-payment of rent]*; (iii) section 47 *[landlord's notice: cause]*; (iv) section 48 *[landlord's notice: end of employment]*; (v) section 49 *[landlord's notice: landlord's use of property]*; (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*; (vii) section 50 *[tenant may end tenancy early]*;
>
> (b) the tenancy agreement is for a fixed term that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
>
> (c) the landlord and tenant agree in writing to end the tenancy;
>
> (d) the tenant vacates or abandons the rental unit;
>
> (e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

Section 45 of the Act, highlighted above, gives the tenant a right to end a periodic tenancy by giving the landlord written notice 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.

In this instance, I find that the earliest day that the tenant could have ended the tenancy in compliance with the Act for any reason would be November 15, 2009, provided the tenant had served the landlord with the written notice prior to October 15, 2009. In this case, I find that the tenant did not give the landlord a written notice at all, even if verbal notice sufficed, it would have given been too late to have affected the debt for rent owed on October 15, 2009 .

In regards to the tenant's argument that the parties had both reached a mutual agreement to end the tenancy, I find that under the Act this is permitted and may be enforced. However, to reach a mutual agreement in compliance with the Act, the parties must follow section 44(1)(c) the Act, above. This specifies that the mutual agreement to end must be in writing. If the "agreement" is not in writing indicating the date that the tenancy ends and signed by both parties, it is not a valid and enforceable mutual agreement. In this instance I find that the parties did not enter into a mutual agreement to end tenancy in compliance with the section 44(1)(c) of the Act.

I find that the tenancy was ended by the tenant in a manner that contravened the Act and the agreement. Section 7 of the Act states that if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Based on the evidence and testimony, I find that the landlord has established a total monetary claim of $1,250.00 comprised of $1,200.00 rent owed for the period from October 15, 2009 until November 14, 2009 and the $50.00 fee paid by the landlord for

this application. I order that the landlord retain the security deposit of $600.00 in partial satisfaction of the claim leaving a balance due of $650.00.

Conclusion

I hereby grant the Landlord an order under section 67 for $650.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

February 2010 _____

Date of Decision Dispute Resolution Officer