

DECISION

Dispute Codes AS, MNSD, MNDC, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for a monetary order. The tenant applied for a monetary order and for an order to allow the tenant to sublet or assign the rental unit.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and a witness for the tenant. A witness for the landlord was available but during the course of the hearing the landlord decided not to call the witness into the conference call.

The tenant had applied for an order to allow her to sublet or assign the rental unit. At the outset of the hearing I asked the tenant that since she is no longer living there if there was a need to pursue that dispute, she agreed there was no need. As such, the tenant's application was amended to exclude this issue.

The tenant also clarified that she was seeking the return of her security deposit and damages for the inconvenience and to provide payment to the friends who helped her out on such short notice totalling \$1,395.00.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for return of the security deposit; and for compensation or loss under the *Act*, and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided into evidence the following documents:

- A Schedule of Events outlining the details of the dispute starting from September 13, 2009 and concluding October 21, 2009;
- A copy of a tenancy agreement and addendums signed by both parties on September 20, 2009 for a month to month tenancy beginning on October 1, 2009 for a monthly rent of \$1,395.00 due on the 1st of the month with a security deposit of \$697.50 paid;
- A copy of a letter dated September 30, 2009 from the tenant to the landlord, explaining why the tenancy cannot take place.

The tenant has submitted the following documents:

- A copy of a summary of events relating to the dispute beginning on September 13, 2009;
- An undated letter from the tenant to the landlord requesting her security deposit and providing a forwarding address.

The landlord testified that she had showed the rental unit to the tenant in September and that she had agreed to allow the tenant to move in early should the previous tenant be moved out in sufficient time to have the unit available early. The tenant provided a security deposit.

The landlord testified she provided the tenant with the previous tenant's phone number as she had expressed an interest in purchasing the previous tenant's television. She further testified the new tenant contacted the old tenant and they made arrangements for the new tenant to move in on September 30, 2009, but the landlord was not informed by either party until September 27, 2009.

The parties agreed that they met together on September 28, 2009 to discuss the issues of moving in early. The tenant stated that she had a very restricted time frame. The landlord stated she could not complete her inspections and cleaning and repairs by the morning of September 30, 2009 as requested by the tenant.

The tenant and her witness testified that they provided at least 5 options to the landlord that were all rejected. The landlord testified that only one option was presented to the landlord. The tenant stated that because she was not allowed to move in within her schedule she had no choice but to end the tenancy.

The tenant could not confirm when she provided the landlord with a forwarding address. The landlord submitted that she received a text message with the address on October 21, 2009. The tenant did not dispute this statement.

Analysis

While the testimony provided helps me understand the actions both parties have taken, it does not remove the obligations the parties have under the tenancy agreement and the Act.

Section 16 of the *Act* 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. I find the parties had entered into a tenancy agreement on September 20, 2009.

As the parties had entered into a tenancy agreement that the tenancy was to begin on October 1, 2009, the landlord had no obligations to allow the tenant to move in prior to that time.

The landlord was trying to accommodate the new tenant's needs and I am satisfied that landlord would have accommodated the tenant if the previous tenant had moved out in time for the landlord to ensure her obligations to the previous tenant and to the new tenant were both accomplished.

As the parties had entered a tenancy agreement on September 20, 2009 the parties were then bound by the requirements set out in Section 44 of the *Act* that states how a tenancy may end, including that the tenant can give the landlord a notice to end tenancy in accordance with Section 45.

Section 45 states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. I find the tenant provided the landlord with a notice to end the tenancy in one day which is in contravention of Section 45. I therefore find the tenant is responsible for rent for the month of October, 2009.

The tenant has provided no evidence to support her claim to an amount over and above her security deposit. And as the tenant is unable to provide a date for when she provided her forwarding address, I must rely on the date provided by the landlord of October 21, 2009.

Section 38 stipulates that the landlord must return a security deposit or file an application to retain any portion of the security deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address. The landlord filed her application on November 2, 2009. I find the landlord has complied with the requirements of Section 28.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,445.00** comprised of \$1,395.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$697.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$747.50**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Based on my findings above I dismiss the tenant's application in its entirety without leave to reapply.

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: March 03, 2010.

Dispute Resolution Officer