

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders for monetary compensation under the Act or tenancy agreement and the return of the security deposit and interest paid.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the monetary compensation sought from the Landlord?

Background and Evidence

This tenancy began in September of 2008, with the parties agreeing to a monthly rent of \$450.00. The Tenant paid a security deposit of \$225.00, in September of 2008.

The rental unit is located in a property in which the Landlord allows no illegal drugs, alcohol or tobacco. The primary purpose of the Landlord providing rental units is to help people recovering from substance abuse.

The Tenant testified that at the outset of the tenancy he was informed by the Landlord that everyone living in the property had to provide urine samples for drug testing when asked. The Tenant testified that at some point following this, he learned that not everyone in the property was required to provide a urine sample for drug testing.

The Tenant testified that following a meeting in February of 2009, where other people and occupants of the property were present, the Landlord requested that the Tenant and another individual provide a urine sample for drug testing. The Tenant was initially unable to physically provide a sample, and then he refused to provide one to the Landlord.

Following this, the Landlord then posted a handwritten letter on the door of the Tenant's rental unit. The Tenant submitted this letter in evidence and it stated, "... you have to leave until today, March 1 th. Please move your belongings. Thank you." [Reproduced as written.]

The Tenant refused to leave. He informed the Landlord that he was not using illegal drugs and that the Landlord had not given him a Notice to End Tenancy in the approved form, so it was invalid. The Tenant and Agents for the Landlord had several conversations about this matter. The Landlord was persistent in trying to get the Tenant to vacate. The Tenant informed the Landlord that he had been informed by his Advocate that he could not be evicted for refusing a urine sample.

The Advocate had phone conversations with and wrote to the Landlord about the attempt to evict the Tenant. According to the evidence of the Advocate, the Landlord had threatened to evict all residents of the property if the Tenant did not vacate. The Agent for the Landlord did not dispute this during the hearing.

The Tenant then filed an Application to dispute the "letter to leave". There was an earlier hearing under a different file, although the Tenant had vacated the rental unit on or about April 2, and before the first hearing had occurred.

At the time he was vacating the rental unit the Landlord withheld \$50.00 from the security deposit and returned \$175.00 of the deposit to the Tenant. The Landlord had performed no incoming or outgoing condition inspection reports, and the Tenant did not sign over a portion of the security deposit.

The Tenant alleges he was intimidated and harassed into leaving the rental unit, and claims for loss of quiet enjoyment of the rental unit and for the return of double his security deposit.

The Tenant had a witness appear at the hearing, however, I found the testimony of the witness did not contribute significant evidence to this matter.

An Agent for the Landlord testified that the Landlord wished to create a community home for people, where no illegal drugs, alcohol or tobacco was allowed. The Landlord wants to create a community where people can change their lifestyles and deal with substance abuse and addiction. The Agent explained that the Landlord gives every occupant three chances if they break the rules, then they have to leave.

The Agent for the Landlord testified that the Landlord had received information from a drug dealer, who is apparently also a “bouncer”, that the Tenant had asked someone if they, “... had a crack pipe”, or words to that effect. The Landlord took this to mean the Tenant was using illegal drugs and requested that the Tenant provide a urine sample. When the Tenant refused to provide a urine sample for drug testing, the Landlord wanted the Tenant to leave immediately, in accordance with the rules the Landlord enforces at the rental property. That is why they posted the letter on his door March 1, asking him to leave immediately.

The Agent for the Landlord also testified that the rental unit building is not a treatment centre, but had a mission trying to help people. She testified that the Tenant had signed the contract agreeing to all the rules. She testified that failure to abide by the rules results in an immediate expulsion. I note the Agent for the Landlord did not explain if the Tenant had been given the “three strikes” warning, and the Tenant denied receiving three warnings.

The Agent for the Landlord testified that when the Tenant was vacating he did not clean the room to their standard and he had stayed two days later than the end of March, and therefore they deducted \$50.00 from his security deposit. The Landlord had not credited the Tenant with interest on his deposit.

The Advocate for the Tenant submitted that there is nothing in the Landlord’s rules that require the Tenant to provide urine samples for drug testing upon request. The Advocate also submitted there is nothing in the Act which allowed the Landlord to evict the Tenant for refusing to provide a urine sample for drug testing.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I **find that the Landlord has breached several sections of the Act.** I find these breaches have caused the Tenant to suffer a loss and therefore, the Landlord must compensate the Tenant, as described below.

While it is commendable that the Landlord is attempting to do good work for the community, the Landlord has insufficient evidence to prove it is exempted from the provisions in the Act or that it is not required to abide by the laws pertaining to residential tenancies.

Under the Act, the Landlord is not able to immediately evict the Tenant, without an order from a Dispute Resolution Officer or without some other authority in the Act. The Landlord had no such order or authority.

Section 52 of the Act required the Landlord to use the approved form to evict the Tenant.

The Agent for the Landlord argued that the Tenant had signed a contract agreeing to these rules, and should be bound by the contract.

I find that the contract and rules attempt to avoid or contract out of the Act by allowing immediate evictions, or by providing the Landlord with other powers well beyond the scope of the legislation. For example, the rules allow the Landlord to do “spot checks or room inspections” without providing the residents with the Notice that the Landlord is entering the rental unit as required in section 29 of the Act.

I find the Landlord is prevented from using such a contract to avoid the Act under section 5, and therefore, the Landlord had no legal right or authority to evict the Tenant for refusing to provide a urine sample for drug testing.

It is also important to note that the Act has provisions to evict for illegal drug use in a rental unit, although here the Landlord did not have sufficient evidence to prove in any way that the Tenant was using illegal drugs, let alone in the rental unit.

I find that attempting to have the Tenant provide a urine sample for drug testing, and then requiring him to vacate the rental unit because he refused to do so, is unsupportable under the Act. It is evident the Landlord persisted in this course of action, despite being informed at least twice that these were not legal actions.

Therefore, I find that the Landlord did not provide the Tenant with quiet enjoyment of the rental unit for the month of March 2009, and I order the Landlord to pay the Tenant the sum of **\$450.00**, equivalent to one month of rent, for failing to provide the Tenant with quiet enjoyment of the rental unit.

The Landlord is also required to do an incoming and outgoing condition inspection report of the rental unit with the Tenant, under the Act. Failure to do so prohibits the Landlord from making any claim against the security deposit. The Landlord did not return all of the security deposit and interest to the Tenant, or make a claim to keep a

portion of it, within 15 days of the end of the tenancy or receipt of the forwarding address. The Landlord also provided no evidence that the rental unit was left dirty.

Therefore, under section 38 of the Act I must order the Landlord to pay the Tenant double the security deposit, with interest on the original amount paid, less the amount the Landlord paid back to the Tenant. I order the Landlord to pay the Tenant the sum of **\$276.00**, comprised of \$450.00 (2 x \$225.00), plus interest of \$1.00 on the amount originally held, less the \$175.00 already paid by the Landlord to the Tenant.

Conclusion

I find that the Tenant has established a total monetary claim of **\$726.00** comprised of the above described amounts, and I grant the Tenant an order under section 67 for the amount due. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I have also enclosed a guidebook to residential tenancies for the Landlord to refer to for information on how to properly conduct its business.

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: May 18, 2010.

Dispute Resolution Officer