



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent; authorization to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

I determined that a written submission provided to the Residential Tenancy Branch by the respondent was not served upon the applicant and I did not consider it in making this decision.

Issues(s) to be Decided

1. Do I have jurisdiction to resolve this dispute?
2. Has the landlord established an entitlement to unpaid rent and utilities from the tenant?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I heard undisputed testimony as follows. The applicant and two other individuals (JT and AVN) reside in the residential property and are themselves tenants of the residential property under a tenancy agreement. The respondent and JT negotiated an agreement to permit the respondent to occupy one of the bedrooms on a month-to-month basis with shared access to the kitchen, bathroom and living areas at the

monthly rate of \$325.00 plus utilities. The respondent moved into the residential property in early February 2010 and paid rent to the applicant for months up to and including May 2010. The respondent had also paid a \$162.50 security deposit to the applicant. There was no written tenancy agreement between the applicant and respondent. The respondent vacated the rental unit May 14, 2010 without prior notice.

In making this application May 25, 2010 the applicant requested compensation of \$650.00 and stated the reason for this dispute was that the respondent failed to give one month of notice. During the hearing the applicant requested compensation of \$325.00 for June's rent, \$100.00 for removing an abandoned dresser and table, cleaning and painting, \$52.00 for hydro, \$50.00 for the filing fee and \$10.00 for registered mail costs.

Upon enquiry, the applicant stated that attempts were made to re-rent the unit to other students by on-line postings but that response from students were low due to the time of year. The applicant acknowledged that responses were received from middle-aged people but the applicant was not comfortable sharing space with middle-aged men. The unit was re-rented for August 2010.

The respondent was of the position that when she agreed to rent the room the rent was to be reduced during the summer months as the respondent would only be storing her property in the room during that time. In May 2010 she learned that the applicant expected full rent for the summer months. While out of town the respondent had communications with AVN about another female moving into the respondent's room. Upon returning to the rental unit May 14, 2010 she discovered luggage in her room belonging to another person. The respondent acknowledged the room required a vacuuming after she vacated but denied the dresser and table belonged to her.

The applicant claims to have no knowledge of another person's luggage being stored in the respondent's room.

Provided as evidence by the applicant were bank statement of the applicant showing deposits of rent from the respondent, photographs of the rental unit and excerpts from email communication between the respondent and AVN.

Analysis

The first issue for me to determine is whether the Act applies to this living arrangement and whether I have jurisdiction to resolve this dispute.

The Act applies to tenancy agreements, rental units and other residential property. A tenancy agreement is defined by the Act and 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”

A tenancy is defined as a right to possess a rental unit under a tenancy agreement. A rental unit is living accommodation rented or intended to be rented to a tenant. A single room occupied as living accommodation does meet the definition of a rental unit.

The Act also provides for a definition of landlord which includes:

- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

In this case, I heard that the respondent had the right to possess one bedroom with shared access to other living areas in exchange for rent. I find the bedroom meets the definition of a rental unit. I also find that the applicant had collected rent and a security deposit thus exercising the rights of a landlord under a tenancy agreement. Since the applicant did not occupy the rental unit but was entitled to possession of the room under her own tenancy agreement I find the applicant meets the definition of "landlord" under the Act. Therefore, I find a tenancy existed in this situation and the Act applies to both parties.

I find insufficient evidence that the terms of the tenancy agreement provided for a reduced rent during the summer months. Accordingly, I proceed to consider whether the landlord is entitled to rent at the rate of \$325.00 per month.

In making this application the landlord sought unpaid rent and utilities of \$650.00 and then claimed amounts other than rent or utilities during the hearing. I find the tenant was not sufficiently notified of claims for amounts other than rent or utilities and I do not amend the application to include those amounts.

Upon review of the email communications between the respondent and AVN it is clear the respondent is of the position that because there is no written tenancy agreement the respondent is not obligated to give notice to end the tenancy. This position is inaccurate as the Act applies to this living arrangement whether the tenancy agreement was written or verbal and under the Act a tenant must give at least one month of written notice to end a month-to-month tenancy.

While it is clear the tenant did not give one month of written notice to end the tenancy and violated the Act in this regard, pursuant to section 7 of the Act, the landlord must show that every reasonable effort was made to minimize any loss of rent to establish an entitlement to compensation from the tenant.

Having considered all of the evidence I am inclined to believe that another person may have been occupying or using the rental unit in the month of May as the tenant refers to this in her email of May 16 to AVN and AVN had mentioned another female wanted to arrange a "sublet" for the tenant's room in an email dated May 10, 2010. Even if I accepted the landlord's testimony that the room was not being used by this other female, the landlord did not provide documentary evidence of advertising efforts to re-rent the unit. Even if I accepted the landlord's testimony that the room had been advertised for rent on-line, the landlord made statements that only applications from female students were pursued which is clearly a choice of the landlord and restricting potential tenants to such a narrow pool does not satisfy me that the landlord made every reasonable effort to minimize loss of rent. For all of these reasons I deny the landlord's claim for loss of rent for June 2010 and July 2010.

With respect to utilities, the landlord claimed the tenant owed \$52.00 for hydro but did not provide copies of utility bills as evidence. Upon review of the email communication with AVN I note the tenant acknowledges owing utilities and it appears the tenant believes she owes more than \$52.00. Therefore, I am satisfied the tenant is liable to pay \$52.00 for utilities.

As the landlord was only partially successful in this application I award a portion of the filing fee to the landlord. Including the filing fee I award the landlord the total amount of \$62.50 leaving a balance of \$100.00 of the security deposit payable to the tenant.

In accordance with Residential Tenancy Policy Guideline 17, I order the landlord to return \$100.00 to the tenant forthwith. The tenant is provided a Monetary Order in the amount of \$100.00 to serve upon the landlord.

Conclusion

The landlord was partially successful in this application and has been authorized to retain \$62.50 of the tenant's security deposit. The landlord must return \$100.00 to the tenant forthwith and the tenant is provided a Monetary Order for that amount to serve upon the landlord.

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: October 14, 2010.

Dispute Resolution Officer