

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The landlord and tenant both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The landlord was assisted by an interpreter who did not give affirmed testimony. All evidence and testimony provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This fixed-term tenancy began on February 1, 2010 and was to expire on January 31, 2011 although the tenant moved from the rental unit on July 31, 2010. Rent in the amount of \$1,850.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$1,850.00 which was returned to the tenant in full.

The tenant testified that in mid-June, 2010 the landlord called him from Korea stating that she was returning to Canada and asked the tenant to move out of the rental unit on August 31, 2010. The tenant testified that the landlord advised him that 2 months notice was required under the *Act*, and was acceptable under the *Act* even though it was a fixed term tenancy. The tenant stated that he found out later that he was entitled to one month of rent. The landlord gave him \$500.00 for moving expenses.

The tenant found a place to move into earlier than the end of August, 2010 and called the landlord in Korea to advise that he would be moving on July 31, 2010. He also stated that he would have not moved if he didn't have to, but the landlord had told him that her daughter was not doing well in school in Korea and she wanted to register her child in school in Canada and would need to reside in the rental unit.

The tenant further testified that the landlord continued to deposit the post-dated rent cheques into her account every month for 6 months after the tenancy ended, which covered the entire fixed term. He had to put a stop payment on each of those cheques which cost him \$20.00 per cheque in bank fees. Copies of the bank statements were provided in advance of the hearing.

The tenant claims one month of rent pursuant to Section 51 of the *Residential Tenancy Act* in the amount of \$1,850.00, \$120.00 for the bank fees, and \$50.00 for the cost of filing this application, for a total of \$2,020.00.

The landlord testified that she did not force the tenant to move out. She stated that she had arranged for her daughter to stay with another family, and she was not going to return to Canada that soon. She also provided copies of a sworn Custodianship Declaration showing the home address of the custodian who declared that the custodian would undertake custodianship for the student, and Information for Homestay from the School District, as well as a document outlining Custodian Expectations, to support her testimony. The landlord stated that she wanted the tenant to move 3 months prior to the fixed term, being the end of October, but would have allowed him to stay to the end of the fixed term.

The landlord further testified that she returned to Canada on August 1, 2010 and the parties conducted an inspection of the rental unit on August 4, 2010. At that time the tenant gave the landlord a copy of Residential Tenancy Policy Guideline 29 on Security Deposits and had highlighted a section that states:

- “The *Residential Tenancy Act* requires that a security deposit must not exceed one-half of one month’s rent. If one or more of the above payments, together with other monies paid, exceeds one-half of one month’s rent then the remedies afforded by the Act would be available to a tenant. In addition, the Act provides that a landlord who contravenes these provisions commits an offence and is liable on conviction, to a fine of not more than \$5,000.00.”

The landlord stated that the guideline was given to her as a threat, and she gave the tenant \$500.00.

With respect to the bank fees, the landlord stated that she went to the bank to get the cheques that were being held from the tenant for the future rent payments, but the bank told her it was the issuer’s responsibility. She advised the tenant of that and he said he would take care of it and she assumed he had and did not know that the cheques continued to be deposited to her account. She called the tenant on November 30, 2010 once she knew of the bank error, and the tenant told her he would assume the fees because he didn’t take care of it as promised in August. She further testified that the

tenant could have stopped payment on all cheques at once, thereby reducing the bank fees payable.

Analysis

The *Residential Tenancy Act* states that a landlord may end a month-to-month tenancy for landlord's use of the property upon giving the tenant a notice in the proper form at least 2 months before the tenancy is to end, and must provide the tenant compensation in the equivalent amount of one month's rent. A landlord may not end a fixed term tenancy for landlord's use of property under the *Act*. In this case, the landlord did not serve the tenant with 2 month's notice and did not provide a notice in the proper form. Therefore, I find that the tenant did not have to move from the rental unit, and the landlord did not have to pay the tenant the equivalent of one month's rent. I further find that the landlord had no obligation to pay the tenant \$500.00 for moving expenses.

With respect to the bank fees, I find that the tenant had an obligation to deal with the post-dated cheques, and failed to mitigate any loss by not dealing with it in August. The tenant did not deal with the loss until sometime after January 6, 2011. The *Act* requires that a person claiming damages must do whatever is reasonable to mitigate or reduce the loss or damage suffered.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed 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 31, 2011.

Residential Tenancy Branch