



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on March 23, 2011. The landlord was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn testimony and evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this tenancy was supposed to start on March 01, 2011. This was to be a fixed term tenancy for one year and a lease agreement is in place. The tenant agreed

to pay a monthly rent for this unit of \$1,312.00 plus \$88.00 for utilities. Rent was due on the 1st day of each month. The tenant paid a security deposit to \$750.00 which was returned to her by the landlord.

The tenant testifies she saw the rental unit advertised and went to look at it. At that time she had a roommate in mind to share the unit with her but unfortunately this person found alternative accommodation. The tenant states she told the landlord this and she agreed she could have two other roommates. Later the tenant found two other people to share the unit and they went to view it with her. The tenant states she then went to see the landlord and signed the lease agreement and paid the landlord the sum of \$750.00 for her security deposit. The tenant agrees the landlord did not sign the tenancy agreement but as far as she knew they had an agreement in place.

The tenant testifies that on February 10, 2011 the landlord called her and told her she could not now rent the unit as the landlords' sister wanted to rent it. The tenant states she spoke to an information officer at the Residential Tenancy Branch and was advised to call the landlord and tell her she must either fulfill the terms of the lease or pay compensation to the tenant. The tenant also states the landlord refused to give her her e-mail address which she had requested so she would have a record of any dialogue between them. The tenant states the landlord also told her she could not rent the unit as the landlords' parents were unhappy about the tenant being a sole lease holder.

The tenant seeks compensation equivalent to two months' rent to the sum of \$2,888.00 because the landlord broke the lease agreement and refused to allow her to move in to the unit.

The landlord testifies that when the tenant first viewed the unit she did not have any intention of renting to her but as the tenant had already given notice on her old unit she agreed she could rent this unit. The landlord states she told the tenant to come back and bring her friends to see the unit. The landlord agrees there was a tenancy agreement in place for the tenant and agrees the tenant has signed this agreement however the landlord states she did not sign it.

The landlord testifies she did not want the tenant to sublet the unit and thought the roommates would be on the lease as well. The landlord states if she had thought the tenant was going to sublet the unit she would not have entered into a tenancy agreement with her. The landlord also states her sister wanted to move into the unit and her sister, the landlord and a friend all now share the unit. The landlord agrees that she should have had a clearer understanding of what was happening before the tenant signed the lease and agrees this was her own fault.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. When a landlord enters into a tenancy agreement whether or not she has signed the agreement; the agreement remains in effect for the stated term. In this case this was a fixed term tenancy for one year and the landlord could not end this tenancy before the end of the fixed term.

The landlords argument that she did not know the tenant would sublet the unit carries little weight as the landlord agreed the tenant could show the unit to her roommates and the tenancy agreement does not have a named tenant on it but does state the rent is limited to three people occupying the premises as agreed upon above. I therefore draw the conclusion from this that the landlord had simply changed her mind about renting to this tenant.

The landlord has stated that she now occupies the rental unit. If the landlord had given the tenant Two Months Notice to End Tenancy for landlords use of the property the tenant would have been entitled to compensation equivalent to one months' rent. As this was a fixed term tenancy and no Notice was given by the landlord it is my decision that I will limit the tenants claim to compensation to a sum equivalent to one months' rent and the tenant will receive a monetary award for the sum of **\$1,312.00** pursuant to s. 67 of the *Act*.

As the tenant has been partially successful with her claim I find she is also entitled to recover her **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,362.00** comprised of \$1,312.00 compensation and \$50.00 filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: July 11, 2011.

Residential Tenancy Branch