



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. The tenant's evidence package was not served on the landlord or delivered to the Residential Tenancy Branch within the required time frame and it is my decision that I will not consider this evidence package, especially since the tenant has been aware of this hearing since May 6, 2011.

I have thoroughly reviewed all the applicants' submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1062.50 and a request to retain the security deposit of \$575.00 as well. The applicant is also requesting recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- The tenant signed a fixed term tenancy agreement with an expiry date of September 1, 2011.
- In November of 2010 the tenant gave her notice that she would be ending the tenancy on December 1, 2010, thus breaching the tenancy agreement.
- She ran advertisements and attempted to re-rent the unit however she was unable to rent the unit in the month of December 2010 and therefore lost the full rent for December 2010.
- She also lost one week of rent in the month of January 2011, before finally re-renting the unit for the last three weeks of January.
- When the tenant vacated she also failed to pay the strata move-out fee that is required in the tenancy agreement.
- She had initially expected to have registered mail costs however she withdraws that portion of the claim because she did not have any registered mail costs.

The applicant is therefore requesting an order as follows:

Lost rental revenue for December 2010	\$1150.00
Lost rental revenue for January 2011	\$287.50
Strata move out fee	\$100.00
Advertising costs	\$25.00
Filing fee	\$50.00
Total	\$1612.50

The applicant is therefore requesting an order allowing her to keep the full security deposit of \$575.00 towards this claim, and requested a monetary order be issued for the difference.

The respondent testified that:

- She did sign a fixed term tenancy agreement, but only after the landlord threatened to raise the rent if she did not, and therefore she does not feel she should be bound by this tenancy agreement as it was signed under duress.
- She did given notice in the month of November to end the tenancy on December 1, 2010 and although she realizes that is late notice she felt she had to move due to the amount of noise and disruption coming from the suite above.
- She had filed many complaints with the landlord over the noise from the suite above however nothing was ever done and the noise and disruption was ongoing.
- I put up with the noise for 11 months but could not take it anymore and therefore chose to break the lease and vacate.
- After vacating I e-mailed the landlord a forwarding address in writing, however to date she has refused to return the security deposit.
- She does not dispute the move-out fee.

The respondent therefore believes that, other than the move-out fee, this full claim should be dismissed and the remainder of the security deposit should be returned.

In response to the tenant's testimony the landlord testified that:

- At no time did she ever threaten to raise the rent if the tenant did not sign a fixed term tenancy agreement and in fact she simply presented agreement to the tenant and the tenant willingly signed.
- If this had been such a terrible place to live for the past 11 months why on earth would the tenant have signed a new agreement.
- She always passed on the tenants concerns about the noise to the strata council, and the strata council investigated and found the noise to be within a reasonable level.
- She has supplied a letter from the present tenant who also states that, although there is some noise, it is at a reasonable level.

- She also never received an e-mail from the tenant with a forwarding address, and in fact only received an e-mail from a former tenant.

Analysis

It is my decision that the tenant is bound by the terms of the fixed term tenancy agreement that she and the landlord signed.

The tenant claims that this document was signed under duress; however the tenant has not met the burden of proving this claim.

When parties sign a fixed term tenancy agreement is for the benefit of both parties. The landlord has the benefit of knowing that they will have a tenant in place for the full term of the tenancy; and the tenant has the benefit of knowing that they cannot be asked to vacate the rental unit without cause for the full term of the tenancy.

If one of the parties to the fixed term agreement chooses to break that agreement they can be held liable for any loss the results to the other party.

The tenant claims that she moved due to the constant noise from the suite above, however I am not convinced that she had reasonable grounds to breach the tenancy agreement, especially since she signed a new fixed term tenancy agreement shortly before vacating. Had the noise been as bad as she claims I find it unlikely that she would have signed a new fixed term agreement.

In this case the landlord has lost rental revenue, and has had to pay advertising costs as a result of the breach of the tenancy agreement and I therefore allow the landlords claim for that lost revenue and advertising costs.

Further since the tenant does not dispute the claim for the move out fee I also allow that portion of the landlords claim.

The claim for mailing costs has been withdrawn.

I further order recovery of the filing fee.

As far as the tenants claim that she sent the landlord a forwarding address by e-mail, at this time e-mail is not a recognized method of service under the Residential Tenancy Act, and therefore the landlord is not considered to have received a forwarding address in writing even if one was sent.

Conclusion

I have allowed the landlords full claim of \$1612.50 and therefore I order that the landlord may retain the full security deposit of \$575.00, and I have issued a monetary order in the amount of \$1037.50.

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: August 11, 2011.

Residential Tenancy Branch