



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

Prior to the hearing the respondent tenant submitted a written request for a summons to compel a former agent for the landlord to attend this hearing. The tenant's request stipulated that she did not have an out of province address for the agent and that the landlord also did not have a current address for the agent.

The tenant suggests that the landlord will have the agent's address when they must provide her with income tax forms at the end of the year. While an employer is required to provide income tax forms to former employees, I am not convinced that means that the former employee must and/or will provide their address to their former employer.

Even if the landlord were to obtain the agent's address it would be her personal address and not related to her business relationship with this landlord, as such the landlord would be prohibited from providing her address to a third party pursuant to the *Personal Information Protection Act*.

Residential Tenancy Branch Rules of Procedure #7.1 stipulates that a request for a summons must set out the name and address of the witness. As the tenant does not have an address for the witness, I decline her request for a summons.

Further in the tenant's request for the summons she submits that the hearing could be adjourned until such time as the landlord provided an address or for the landlord to notify the agent to attend the hearing.

As it is the tenant's wish to have the agent attend the hearing, it is not required that the landlord provide any notification to the former agent and as noted above the landlord

cannot provide the tenant directly with the agent's address. As such, the responsibility would fall on the tenant to find the agent on her own. The tenant testified that she has no means to do this and as such withdrew her request for an adjournment.

The landlord, at the outset of the hearing requested an amendment to the amount of the monetary claim in the Application. The landlord requested the total amount of the claim be reduced from \$2,427.10 to \$2,421.50 in recognition of the actual costs of carpet cleaning. I accept this amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent due to a short notice to end the tenancy; for carpet cleaning; liquidated damages; return of a move-in bonus; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on April 20, 2011 for a 1 year fixed term tenancy beginning on May 1, 2011 for a monthly rent of \$1,325.00 due on the 1st of each month, with a security deposit of \$662.50 paid on April 19, 2011.

The parties agree the tenant vacated the rental unit by June 30, 2011. The tenant provided testimony and documentary evidence that her unit was broken into on the night of June 20, 2011 while she was in the shower. The tenant submits that the intruder gained entry through a window that was "jimmied" open. The landlord is seeking rent for the month of July 2011.

The tenant submitted a copy of a letter dated June 22, 2011 that she wrote to the landlord stating: "...I am giving notice for moving out of [the address] by July 1, 2011." The tenant also notes in her letter that she can no longer live in the complex as the safety standards on the residential tenancy agreement she signed have not been met. The tenant testified the window had not been repaired until June 23, 2011. The landlord testified the window repair had taken so long because of the availability of window installers had been limited during a period of high demand in the community from a recent event in the downtown core.

The tenant testified that her actions are allowed under Section 45(3) of the *Act*. The tenant asserts that because Section 6 of the tenancy agreement states: "The landlord must provide and maintain the Residential Development in a reasonable state of decoration and repair, making the Residential Development suitable for occupation by a reasonable tenant. The landlord must comply with health, safety, and housing standards required by law"; the locks provided on the windows were aftermarket locks; and the dowels for use as locking mechanisms were too long the landlord failed to comply with a material term of the tenancy agreement and the landlord did not correct the situation within a reasonable time of receiving written notification from the tenant.

The tenant cited, but provided no copy of, Bylaw #5462 of the local community that states in Section 8.1 in relation to exterior doors and windows landlords are required to repair and replace defective or missing essential door and window hardware. In her written submission the tenant notes she obtained this information from a representative from the local government on October 3, 2011.

The tenant also suggests the landlord failed to disclose, after she asked on the day her unit was broken into, about previous break-ins and was told there were none. The tenant testified that she had heard of 4 breaks in that unit alone and several others in the entire complex over the last couple of years. The tenant provided no other evidence of any additional break-ins in the unit or complex. The tenant testified that when she viewed the rental unit she did not ask any questions regarding history of break-ins or locks on the window of this ground floor rental unit.

The landlord testified they run continuous advertisements for rental units available in the complex and they re-rented the unit effective August 15, 2011 in a tenancy agreement signed by the new tenants on August 15, 2011. The tenant testified she did not see the landlord advertising on Craigslist, which is where she saw the advertisement when she was looking for rental accommodation.

The tenant also testified that when she completed the move out inspection, the landlord's agent told her that she would not rent this unit to a female tenant and as such the landlord failed to take all reasonable steps to mitigate the loss of rent. The landlord's agents could not provide any specific dates or numbers of potential new tenants who viewed the unit. The tenant provided no evidence or testimony confirming the landlords did restrict consideration of potential new tenants to only male tenants when showing the unit.

In Section 3(a)(i) the tenancy agreement also contained the following clause: "To terminate this lease prior to the expiry date on the 30th of April 2012 the tenant will be

required to pay \$300.00 and must give one calendar month's notice. The tenant agrees that the lease breaking sum may be deducted from the security deposit or otherwise be paid." The landlord seeks this payment from the tenant as liquidated damages.

Section 5 of the tenancy agreement stipulates to "Write down any additional terms which the tenant and landlord agree to. Additional terms may cover matters like move-in and move-out times, pets, yard work, smoking and snow removal.....Attached to this tenancy agreement, there is/is not an Addendum consisting of_____ page(s) of_____ additional terms that form part of this tenancy agreement." I note there is no indication that there is or is not an addendum attached to the agreement.

However, the landlord submits the document provided into evidence entitled "Addendum to Residential Tenancy Agreement Moving Expense Request" is an addendum to the terms of the tenancy agreement. The document itself states that if a tenant moves out before completing 12 months of tenancy the allowance or food voucher must be reimbursed to the landlord. The landlord seeks a reimbursement of \$662.50 as the amount credited to the tenant, as shown by the tenant's account summary provided into evidence by the landlord.

The landlord also seeks compensation in the amount of \$84.00 for carpet cleaning based on the tenant's signature on the move in Condition Inspection Report, dated April 19, 2011 stating that the tenant has "inspected the above apartment prior to occupancy and accept it with the conditions noted and agree to leave this apartment in a clean condition upon vacating including carpet and drapery cleaning."

The same document is used as the move out Condition Inspection Report completed on June 30, 2011 that indicates that the entire unit is clean and required no hours of cleaning.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45 of the *Act* states a tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 45(3) does allow a tenant to end a tenancy if the landlord has failed to comply with a material term of the tenancy and has not corrected the situation within a reasonable time after the tenant gives written notice of the failure.

From the tenant's letter to the landlord dated June 22, 2011 I find the tenant gave the landlord notice of her intention to end the tenancy not a notice of failure to comply with a material term of the tenancy agreement. Even if I were to consider the letter as a notice to the landlord to comply, the windows were repaired the following day and as such the tenant failed to give the landlord a reasonable time to comply.

As such, I find the tenant was responsible for the payment of rent to the end of the fixed term tenancy or until the landlord re-rented the unit. I accept the landlord took reasonable steps to re-rent the unit. I also find the tenant has failed to provide any evidence to substantiate her claim that the landlord did not consider all potential tenants regardless of gender. The landlord seeks only compensation for rent for the month of July 2011, I find the landlord is entitled to this amount.

Residential Tenancy Policy Guideline 4 states: "A liquidated damages clause is a clause in a tenancy agreement where parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable."

In relation to the landlord's claim for liquidated damages, I find the clause relied upon by the landlord outlines a fee or penalty to be charged by the landlord to allow the tenant to convert the fixed term tenancy to a month to month tenancy and allow the tenant to end the tenancy with a one month notice. I therefore find that this clause is unenforceable and dismiss this portion of the landlord's Application.

Regarding the landlord's claim for reimbursement of a move-in allowance, as the tenancy agreement stipulates there are no addendums, and despite the landlord's agent's assertion that it is part of the tenancy agreement, I find the agreement for a move-in allowance is not a part of the tenancy agreement.

Further, as the move-in allowance is an incentive, as per the landlord's agent's testimony, for potential tenants I find that the move-in allowance agreement is a contract entered into between the parties that is outside of the *Act* and as such, I decline

jurisdiction in the matter. The landlord is at liberty to seek remedy through a court of competent jurisdiction for breach of a contract.

Finally, in relation to the landlord's claim for carpet cleaning I find the term noted in the move in Condition Inspection Report that states "....agree to leave this apartment in a clean condition upon vacating including carpet and drapery cleaning" does not require the tenant provide professional or steam cleaning it simply implies that the carpets and draperies must be clean.

As such, I find in conjunction with the record of the condition of the carpet in the rental unit as provided in the move out Condition Inspection Report that there was no requirement for the landlord to charge the tenant with additional carpet cleaning charges. I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,350.00** comprised of \$1,325.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application as the landlord was only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$662.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$687.50**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: October 19, 2011.

Residential Tenancy Branch