



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for 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 from the landlords for the cost of this application.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the landlord in advance of this hearing. All evidence and testimony of the parties has been reviewed and are 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?

Background and Evidence

Both parties agree that this month to month tenancy started on January 03, 2011. Rent for this unit was \$695.00 per month and was due on the first day of each month in advance.

The tenant testifies that she had a phone conversation with the male landlord on May 31, 2011. The tenant states this male landlord told the tenant that the landlords had been in discussions with someone from overseas who wanted to rent the unit for a fixed term and

pay a higher rent of \$950.00 per month. The tenant states she could not afford to match this higher rent and told the landlord this.

The tenant testifies that on June 01, 2011 she was served with the first page of a One Month Notice to End Tenancy. The tenant states she checked on line and determined that without giving a reason to end the tenancy or page two of the Notice the notice was incorrect. The tenant testifies she spoke to the male landlord on June 06, 2011 to inform the landlords that the Notice was incorrect and that the 30 days was not sufficient time for her to find alternative accommodation. The tenant states the male landlord was rude and belligerent towards her and told her that "you disgust me" The tenant states that as this landlord is a realtor he should have been aware of the Residential Tenancy Act.

The tenant testifies that on June 07, 2011 the female landlord contacted her and asked to meet that day. The tenant states she met with this landlord who asked her to sign a mutual agreement to end tenancy on July 03, 2011. The tenant states she informed the landlord that this was not reasonable or sufficient time for her to move herself and her son and so they agreed on a move out date of August 03, 2011 and the parties signed the mutual agreement to end the tenancy. The tenant states she informed the landlord that if she could find alternative accommodation sooner than August 03, 2011 she would move earlier and they agreed if this was the case the tenant would only have to pay rent up to the day she moved out.

The tenant testifies she found alternative accommodation and informed the landlord she would now be able to move out on July 11, 2011. The tenant states the landlord reneged on their verbal agreement concerning the rent for July and the tenant was forced to pay rent up to July 31, 2011 so continued to reside at the unit until that date. The tenant testifies that she has to pay \$850.00 for her new rental unit.

The tenant seeks to recover the rent paid for July, 2011 of \$695.00; Two months' rent totalling \$1,390.00 for the improper Notice to End Tenancy; and the difference between her old rent and her new rent of \$155.00 per month for six months totalling \$930.00 for compensation for being forced to move out.

The landlord disputes the tenants claim. The landlord testifies that at the start of the tenancy the tenant assured the landlords that she needed a safe place to live and it would be a temporary arrangement of between one and three months. The landlord testifies that they told the tenant three months would be fine as they had been in contact with a potential tenant moving from overseas.

The landlord testifies the tenant did not inform the landlords when she would be vacating the unit and continued to live there. The landlord testifies she did serve the tenant with an incorrect Notice to End Tenancy but after seeking advice from the Residential Tenancy Branch she was advised to ask the tenant to sign the mutual agreement to end tenancy instead. The landlord agrees that they both signed this agreement that became effective on August 03, 2011. The landlord disputes that they had a verbal agreement with the tenant to withhold rent is the tenancy ended sooner.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the tenants monetary claim; when a tenant has a month to month tenancy. The tenancy can only end if the landlords have grounds to end the tenancy or if the tenant gives written notice to end the tenancy or the tenant and landlords sign a mutual agreement to end the tenancy. In this matter the parties did sign a mutual agreement to end the tenancy effective on August 03, 2011. The tenant argues that she had a verbal agreement with the landlord that she would not be responsible for any further rent if she moved out before this agreed upon date. However by there nature, verbal agreements are difficult to prove and when one party contradicts the other party as to this verbal agreement there is no corroborating evidence available to the person making the claim and it becomes one persons word against that of the other. As the burden of proof falls to the person making the claim which in this case is the tenant I find the tenant has not met that burden of regarding this alleged verbal agreement. Consequently, I find the tenant would be responsible for rent up to the end of the tenancy and the tenants claim for the return of rent paid for July, 2011 is denied.

With regard to the tenants claim for two months rent of \$1,390.00 due to an improper notice to end the tenancy. The Notice was incomplete and would have been deemed to have been an invalid Notice if the tenant had disputed the notice by filing an application for Dispute Resolution within 10 days of receiving the Notice. There is no provision under the Act to award compensation to a tenant because the landlord has served an invalid Notice; therefore, the tenant is not entitled to seek compensation from the landlord for serving this notice and this section of the tenant's application is denied.

With regard to the tenants claim to recover the difference between her old and new rent; As the tenant agreed to end the tenancy and signed the mutual agreement with the landlord it is unreasonable for the tenant to hold the landlords responsible for her higher rent payments. Consequently, this section of the tenants claim is denied.

As the tenant has been unsuccessful with her claim she must bear the cost of filing her own application.

Conclusion

The tenant's application is 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: November 25, 2011.

Residential Tenancy Branch