



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord testified that the two tenants named on the residential tenancy agreement (the applicant's former roommates) did not notify the landlord that they were planning to end this tenancy by January 31, 2012 until January 1, 2012. The applicant testified that he moved into this rental unit with his former roommates on or about January 2, 2012. He remained in the rental unit until February 29, 2012 after his former roommates vacated the premises at the end of January 2012. The landlord confirmed that she received a copy of the applicant's dispute resolution hearing package sent by the applicant by registered mail on February 1, 2012. I am satisfied that these documents were served to one another.

As the applicant has vacated the rental unit and the tenancy has ended, there is no need to consider the applicant's application for the issuance of an order against the landlord.

Issues(s) to be Decided

Is the applicant entitled to a monetary award for loss arising out of this tenancy? Is the applicant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord submitted a copy of a fixed term residential tenancy agreement with MFA and AA (the applicant's former roommates or the tenants) for the period from August 1, 2011 until January 31, 2012. According to that agreement, the parties agreed that the

tenancy would continue after January 31, 2012 unless the tenants gave written notice to end the tenancy at least one clear month before the scheduled end of the term.

Monthly rent was set at \$1,600.00, payable in advance on the first of each month. As per an agreement between the tenants, the applicant and the landlord, the landlord has returned most of the tenants' \$800.00 security deposit paid on July 10, 2011.

When the tenants did not provide sufficient notice to end their tenancy in accordance with their agreement, the landlord discussed this matter with the tenants and the applicant. The landlord agreed to let the applicant remain in the rental unit for the month of February 2012 in exchange for one full month's rent for that month. However, the tenants, the only party who signed a residential tenancy agreement with the landlord, signed and initialled provisions of their "Move Out Notice and Permission to Show Suite" authorizing the landlord to show the suite in their presence or absence between the hours of 11:00 am and 5:00 pm.

The applicant applied for a monetary award of \$1,600.00 against the landlord, the full amount that he paid to sub-let the rental unit. He asked for this amount because two of the landlord's representatives entered the rental unit one day when he was sleeping, early in February 2012, to show the rental unit to a prospective tenant. He testified that the landlord's actions were contrary to the provisions of section 30 of his former roommates' residential tenancy agreement requiring the landlord to provide 24 hours written notice before entering the rental unit. The applicant asked that the provisions of his former roommates' residential tenancy agreement be applied to his short-term sublet of these premises. He also testified that the landlord proceeded to post a notice on his door every day after he applied for dispute resolution seeking entry to his rental unit advising that they would be showing the rental unit to prospective tenants. He said that they only entered his rental unit on two or three occasions after the initial incident where improper notice was given.

Analysis

The parties confirmed they did not enter into a new signed residential tenancy agreement from February 1, 2012 until the applicant vacated the rental unit by February 29, 2012. Since the tenants did not provide proper notice to end their tenancy by the scheduled end of their tenancy, their tenancy agreement continued until February 29, 2012, although the applicant was occupying the rental unit and paying the rent for that month. Although the applicant did enter into agreements regarding the return of the security deposit, I find that the original tenancy agreement was still in place and formed the basis for the continuation of the original tenancy until February 29, 2012.

The tenants, the signatories to the residential tenancy agreement that was still in force for February 2012, did provide their written authorization to let the landlord show the rental premises to prospective new tenants from 11:00 a.m. until 5:00 p.m. each day. Section 30 of their residential tenancy agreement stated that 24 hours notice needed to be given “unless the tenant agrees otherwise.” I find that the tenants’ written agreement to allow the landlord to show the premises between 11:00 a.m. until 5:00 p.m. each day constituted the tenants’ written agreement to vary from the 24 hour notice provision set out in section 30 of the tenancy agreement that was still in force for February 2012.

When the applicant voiced his objection to the landlord regarding the lack of written notice to show the premises, the landlord gave repeated written notices advising him that they were intending to show the premises if they had prospective tenants. I find that this extra notice was not necessary, as permission had already been sought and obtained from the legal tenants for the continuing tenancy agreement. As I find that the landlord had obtained the written authorization from the legal tenants whose residential tenancy agreement was still in place for February 2012, I dismiss this application for a monetary award without leave to reapply.

Even if I am wrong regarding my determination regarding the written authorization provided by the tenants, I find that the landlord had every reason to believe that the tenants’ written authorization enabled them to show the rental unit between 11:00 a.m. and 5:00 p.m. during February 2012, after first knocking to check if anyone was in the rental unit. As noted above, the landlord also took the additional precaution of providing written notice to the applicant once the landlord realized that the applicant was not satisfied with the landlord’s accessing the rental unit in accordance with the tenants’ written authorization to do so. Notwithstanding my finding regarding the written authorization provided by the tenants, I find that the applicant has not provided sufficient evidence to demonstrate that he is entitled to any monetary award for losses based on the single disputed entry into the rental unit by the landlord’s representatives.

Conclusion

I dismiss this application 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: April 02, 2012

Residential Tenancy Branch