



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 17, 2012 for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on April 5, 2012 for:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation – Section 67
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

On January 25, 2012, the Tenant met with the Landlord to view the unit and paid \$100.00 to hold the unit. Later that day, the Tenant came with her husband to look at the unit and to sign the lease together as joint tenants for a February 1, 2012 occupancy. The Tenant states that upon meeting with the Landlord, the Landlord

informed the Tenant that no smoking was allowed outside the unit. The Tenant states that the husband then refused to sign the tenancy agreement as he was a smoker. The Tenant states that the Landlord then asked the Tenant to sign the lease anyway and the Tenant agreed to sign on the condition that the unit is cleaned prior to move-in and on the condition that she was able to convince her husband to sign the tenancy agreement as well. The Tenant provided the Landlord with a cheque for \$350.00 for the remainder of the security deposit and \$950.00 for February 2012 rent. The Tenant states that she called the Landlord repeatedly on January 26, 2012 and also attended at the Landlord's residence but that the calls were not returned and although lights were on at the Landlord's residence, nobody answered the door.

The Tenant states that on January 27, 2012, the Landlord told the Tenant that the unit would not be cleaned and the Tenant informed the Landlord that the Tenants would not move into the unit unless the unit were clean. The Tenant states that on this date the Tenant discovered that the Landlord had cashed the rent cheque. The Tenant places a stop payment on the security deposit cheque and sent the Landlord a registered letter to cancel the tenancy agreement and to ask for the return of the monies and post dated cheques. The Tenant states that based on the information received from the Residential Tenancy Branch, they believed that until the Landlord returned their cheques and agreed to cancel the tenancy agreement, they had a right to the unit for February 2012. On February 1, 2012, the Tenant states that her husband attended the unit to see if it was clean as they were prepared to move into the unit. The Tenant states that the husband could not access the unit as the lock combination had been changed. The Tenant states that when her husband went to the Landlord's unit in the same building, the Landlord told him to leave and not come back. The Tenant states that her husband does not speak English so he called the Tenant's brother who called the police. The Tenant states that the police advised the Tenants to call the Residential Tenancy Branch. The Tenant states that on February 1, 2012 did the Tenant's husband did not talk to the Landlord about the return of the monies. The Tenant states that the Landlord cashed the rent cheque but not the security deposit as the Tenant had placed

a stop payment on this cheque. The Tenants claim return of the \$100.00 deposit and rent paid for February 2012.

At the onset of the Hearing, the Landlord's Agent stated that no one else was appearing with the Agent at the Hearing, however, in responding to the Tenant's evidence, it became clear that another person was with the Agent. Upon questioning, the Agent stated that the Landlord was present with the Agent but that the Landlord could not speak English very well. Upon hearing the Landlord provide direct evidence in relation to the events of February 1, 2012, it became clear that the Landlord could speak English comfortably.

The Landlord states that the Tenant signed the tenancy agreement and therefore the tenancy agreement is valid. It is noted that the tenancy agreement sets out a one year fixed term. The Landlord states that the unit was cleaned for the Tenant as requested on January 27, 2012 and the Landlord provided receipts for this cleaning and photos of the unit. The Landlord denies that the lock combination was changed on the unit and that when the Tenant's husband arrived at the unit on February 1, 2012, although the Tenant informed the Landlord that the unit lock was changed, the Landlord told the Tenant to return to the unit and try again. The Landlord states that the Tenant was upset and demanded the return of the monies paid and the post-dated cheques. The Landlord states that the Landlord did not attend with the Tenant's husband to check on the lock as the Landlord was on the phone at the time. The Landlord states that after she was off the phone the unit lock was checked and found to be working. The Landlord states that by this time the Tenant had left.

The Landlord states that the Tenant breached the fixed term agreement and that after advertising on various online media, a new Tenant was found for April 1, 2012. The Landlord states that the unit was advertised for a March vacancy. The Landlord claims lost rental income for March 2012 plus the costs of re-renting the unit.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the rental unit. Given the evidence of the Tenant in relation to the signing of the tenancy agreement and in relation to the intentions of the unit to move into the unit for at least the month of February, 2012, I find that the Parties entered into a valid tenancy agreement.

Section 7 of the Act provides that where a party does not comply with the Act, regulation or tenancy agreement, this party must compensate the other party for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

Although the evidence of the Parties in relation to the Tenant's right to access the unit on February 1, 2012 is in direct conflict, given the non-disclosure of the Landlord about her presence at the Hearing and the statement that the Landlord speaks limited English, I find that the Landlord's credibility is in question and as a result, I find that the Tenant's version of events is preferable. Accordingly, I find that the Tenant's were refused access to their unit on February 1, 2012 by the Landlord, that the Landlord changed the lock combination and that the Tenants were unable to move into the unit as a result. I find that the Tenant's are entitled to compensation in the amount of **\$950.00** and to return of the remaining security deposit of **\$100.00**. The Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,100.00**. Given the finding that the Landlord caused the end of the tenancy by her actions, I dismiss the Landlord's application for compensation and loss of rental income.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,100.00**. If necessary, this order may be filed in the Small Claims Court and 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: April 26, 2012.

Residential Tenancy Branch