



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application, seeking a monetary order for compensation or losses under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The Tenant and the Landlord had exchanged their documentary evidence prior to the hearing; however, the Landlord's evidence had not reached the Arbitrator prior to the hearing. I allowed the Agent for the Landlord to send the Landlord's evidence in by facsimile following the hearing.

The Agent for the Landlord also requested that his personal name be excluded from the Tenant's Application and that the name of the Landlord be amended to reflect the correct Landlord's name. I have amended the style of cause accordingly.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

This was a month-to-month tenancy, in which the Tenant paid \$825.00 a month in rent due on the first day of each month.

On or about October 2, 2012, the Tenant called the Agent for the Landlord and explained she wanted to end the tenancy for the end of October 2012.

The Agent for the Landlord explained to the Tenant that a verbal notice to end tenancy was not sufficient to end the tenancy, and in any event, the Tenant had not given the required one month of notice to end the tenancy. The Agent for the Landlord informed the Tenant that she would have to pay rent for November 2012, as she had not given the required notice of one month. The Tenant paid the Landlord \$825.00 in rent for November 2012. The Tenant provided a written Notice to End Tenancy to the Agent, on or about October 29, 2012.

The Tenant testified she vacated the rental unit on October 31, 2012, and that she met with the Agent for the Landlord on November 6, 2012, and returned the keys to the rental unit on that day. The Agent for the Landlord testified that they had a new renter move into the rental unit on November 6, 2012. Following this the Agent for the Landlord returned \$104.00 to the Tenant as the refund of rent from November.

The Agent for the Landlord explained that the new renter, who moved from a different unit in the same building into the subject unit, had already paid rent at a rate of \$695.00 for their previous suite in the same building. The Landlord had allowed this renter to move into the subject rental unit on November 6, 2012.

The Tenant claims the Landlord should return the rent from November 7 through 30 to the Tenant, as the Landlord had another renter in the subject rental unit. The Tenant requests \$660.00 as the return of the rent, before subtracting the amount already paid to her of \$104.00.

In their written submissions, the Agent for the Landlord set out their calculations for the refund to the Tenant, which includes the rate of rent paid by the new renter in their old non-related rental unit, as follows:

“Details:

Unit #304 rent to the outgoing MB was \$695/mo

Unit #304 rent to the incoming SK stayed the same at \$695/mo

Unit [subject unit and Tenant] rent was \$825.00/mo

Unit [subject unit] rent to the incoming [new renter] stayed the same at \$825/mo

Unit [subject unit] @ \$825/mo divided by 30 days in Nov/12 works out to \$27.50/day

Unit #304 @ 695/mo divided by 30 days in Nov/12 works out to \$23.17/day

Difference of \$4.33/day rent.

Calculation:

\$4.33 x 24 days in November - \$103.92. Rounded up to \$104

MB who moved into [the subject unit] had already paid rent of \$695.00 for #304. Therefore, the incoming MB was charged the pro-rated difference in rents of \$104 to move into [the subject unit] in part way through Nov/12."

[Reproduced as written.]

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant is entitled to a refund of rent in the amount of **\$556.00**, comprised of the balance of November rents of \$660.00, less the \$104.00 already paid to the Tenant by the Landlord.

The preferred calculation method here is to compensate the Tenant for the rent she paid for the days when the new renter took possession of the rental unit. There is no evidence before me that the Landlord informed the Tenant they would be responsible for all the losses suffered by the Landlord, such as a loss of rent in another unit, as implied by the policy guidelines.

The calculations performed by the Agent for the included taking into account the amount of rent paid by the new renter for their old rental unit. The differences in the rent amounts paid have no bearing on a month-to-month tenancy, although it *might* have had an effect if this was a fixed term tenancy and proper notice was given to the Tenant of the Landlord's intentions to claim for all losses. Simply put, the amount of rent paid by the incoming new renter on their old rent unit is irrelevant to the rent paid for the subject rental by the Tenant.

The Tenant gave up possession of the rental unit to the Landlord on November 6, 2012. Although the Tenant was responsible to compensate the Landlord for loss of rent for November in the subject rental unit, due to the breach of the Act regarding the giving of improper notice to end tenancy, the Landlord mitigated the losses by having a new renter move into the rental unit.

The Tenant was only required under the Act to compensate the Landlord for losses incurred due to her failure to give the required one month notice. Had the Landlord not rented the subject rental unit for any day in November, the Tenant would have been required to pay the entire month of rent in the amount of \$825.00. However, that was not what happened here as the Landlord had a new renter move into the subject rental unit on or about November 7, 2012.

Therefore, I find the Tenant is entitled to a refund of rent in the amount of **\$556.00**, comprised of the balance of November rents of \$660.00, less the \$104.00 already paid to the Tenant by the Landlord.

I find the Tenant has established a monetary claim of **\$606.00**, comprised of the \$556.00 explained above, and the filing fee of \$50.00 for the Application. I grant and issue the Tenant a monetary order in those terms, which must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Tenant is entitled to a refund of rent paid and the filing fee for the Application in the amount of \$606.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 02, 2013

Residential Tenancy Branch