



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order allowing the tenants to assign their tenancy and a monetary order. The hearing was conducted via teleconference and was attended by the landlord, the tenant and the tenant's partner.

At the outset of the hearing the landlord requested cancellation or adjournment because the tenant failed to serve the landlord with his Application within 3 days of making his Application. The landlord stated she is not able to have legal counsel present on such short notice.

The parties agreed the tenants returned the keys to the rental unit via registered mail on January 31, 2013 and the landlord acknowledged receipt of the keys on February 7, 2013.

The tenant provided evidence that he had originally served the landlord with his Application and notice of this hearing on February 21, 2013 and that despite being notified by Canada Post on February 22, 2013 that there was registered mail the landlord left it unclaimed. The landlord stated she did not receive any notification from Canada Post.

The tenant also provided evidence that he served the landlord with his amended Application and evidence on April 30, 2013 and that the landlord was notified by Canada Post on May 1, 2013. The landlord confirms received of the registered mail on May 7, 2013. As I have no authority to cancel an applicant's claim or hearing I dismiss the landlord's request to cancel the tenant's Application.

In regard to her request for an adjournment I find that it was the landlord's own inactions in failing to pursue a notification of registered mail she would have received on February 22, 2013. I find it unlikely, based on the fact the landlord received notification of registered mail on February 7, 2013 and May 1, 2013, that she would not have received the notification of registered mail for the tenant's original Application package. As such, I find no reason to grant an adjournment at this time as the landlord would have had sufficient to prepare for this hearing had she accepted the registered.

Further, as the landlord was notified that she had registered mail on May 1, 2013 that contained the tenant's amended Application I find that she could have received that evidence well within the 5 day requirement prior to the hearing as is set out in the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to assign or sublet the rental unit; to a monetary order return of the security deposit; and to recover fees for the hiring of legal counsel, pursuant to Sections 34, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants provided a copy of a tenancy agreement signed by the parties on March 4, 2011 for a 3 year, 3 month, and 1 day fixed term tenancy beginning on April 1, 2011 for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00.

The tenants submit that they contacted the landlord in December 2012 seeking to assign or sublet the rental unit as the needed to end the tenancy. The landlord responded, through her legal counsel, by requesting the tenants provided names and reference information to the landlord's legal counsel.

In early January 2013 the tenants began to put forward names and reference information. They submit they received a response from the landlord's legal counsel to provide letters of references; information on pets; and current addresses of prospective tenants.

In all the tenants put 4 names forward to the landlord and heard no response. At the end of January 2013, the tenants vacated the rental unit and returned their keys to the landlord by registered mail on January 31, 2013.

The landlord testified that she has sufficient grounds to turn down two of the prospective tenants that had been put forward by the tenants. In one case, the prospective tenants had two dogs and the strata rules only allow for 1 dog and in the second case the landlord submits the prospective tenants refused to allow her to complete a credit check.

The landlord submits that she did accept, verbally, some tenants and they originally had agreed to move in at the start of February 2013 but that they later changed this to mid February and then ultimately they moved in on March 1, 2013 at which time they signed a new tenancy agreement and she accepted rent and a security deposit from the new tenants.

The tenants seek to have their tenancy agreement assigned to the new tenants and return of their security deposit. In addition, the tenants seek compensation for legal fees as they felt they must hire a lawyer when the landlord was not responding in a timely manner to their requests for assignment or subletting. The tenants seek \$712.54 in legal and registered mail fees.

Analysis

Section 44 of the *Act* stipulates that a tenancy ends when, among other things, a tenant vacates or abandons the rental unit. As such, I find the tenancy ended when the tenant's vacated the rental unit. I also find the landlord entered into a new tenancy agreement and collected a new security deposit and as such there is no requirement to have these tenant's tenancy assigned to the new tenants.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. As the landlord, at the time of this hearing, had not filed an Application for Dispute Resolution seeking to claim against the tenant's security deposit, I order the landlord return the security deposit.

In relation to the tenant's claim for legal fees and registered mail I find that these are choices the tenant made in how he wanted to handle his situation with the landlord and the landlord cannot be held responsible for these choices. I therefore dismiss this portion of the tenant's claim.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$500.00** comprised of the security deposit. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: May 21, 2013

Residential Tenancy Branch

