



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RR MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return the security deposit pursuant to Section 38;
- b) An Order for a refund of overpaid rent, compensation for an emergency repair and for insufficient notice to end tenancy; and
- c) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail the landlord agreed she had received it. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to the return of the security deposit according to section 38 of the Act and to a monetary order for overpaid rent, compensation for an emergency repair and for insufficient notice to end the tenancy?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The parties disagree as to whether or not this was a residential tenancy. The hearing proceeded with the proviso that I would determine my jurisdiction based on the facts presented by the parties.

It is undisputed that the unit had been listed for approximately 1.7 million when the tenant moved in. It is undisputed that the tenant got the key on November 12, 2012 and paid \$16,000 to the landlord and the landlord has refunded \$4,800 of that. It is undisputed that an amount of \$3,200 was to be paid monthly, the tenant says as rent and the landlord says just to reimburse her for expenses. Of the \$16,000, \$3,200 was a deposit and the remainder was to be rent or reimbursement of \$3,200 a month for 4 months. The tenant said it was a year's lease; the landlord denies this.

The landlord said the unit was on the market but she withdrew it to have compassion on the tenant who needed a place to have her baby. She said she was shocked on February 15, 2013 when she saw the tenant had moved a brother and father into the unit besides her husband and baby. She said it was messy and years had been added to its appearance so she told the tenant to find another place to live for the next month and she told her real estate agent to list the unit again for sale. In evidence is the history of the listing which shows it expired on December 31, 2012 and became active again on February 25, 2013.

It is undisputed that the tenant vacated the unit but did not return the keys until March 15, 2013 so I find the tenancy ended on March 15, 2013. The tenant is claiming the security deposit of \$3200 + one half of a month's rent plus two extra months based on section 52 as the landlord should have given her two months notice to end tenancy or at least one month's notice. She waives the cost of toilet repair as she provided no evidence on it. She has not provided a forwarding address in writing to the landlord for the return of her security deposit. In her application, she states the landlord had agreed to repay her half of one month's rent.

The landlord said the tenant got a month's notice for she was told on February 15th to leave and did not return the keys until March 15, 2013; she had agreed to pay the tenant half of one month's rent if she moved.. In any case, the landlord states it is not a tenancy, there was no lease, she never would have charged as little as \$3,200 a month as this barely covers expenses.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The onus is on the tenant who is the applicant to prove her claim on a balance of probabilities. I find the Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied between a landlord and tenant respecting possession of a rental unit. I find as fact that the parties had an oral tenancy agreement but not a one year fixed term lease. In support of there being a tenancy, I find there was a fixed monthly payment, a security deposit and exclusive occupation of the unit given to the tenant. The Act defines a landlord as one who permits occupation of the rental unit under a tenancy agreement. As I find this was a tenancy arrangement between the parties, I find I have jurisdiction under the Act.

I find the landlord's evidence more credible than the tenant's that this was a temporary arrangement and not a year's lease as this is supported by the past history of the listing agreements and the fact that only four month's rent was collected from the tenant.

I find the tenant occupied the unit in total for 4 months, that is November 15, 2012 to March 15, 2013. Her rent as agreed with the landlord was \$3200 a month for a total of \$12,800 for the time she occupied the unit. Based on the tenant's own evidence, I find the landlord repaid her \$4800 which was the return of her security deposit in full plus \$1600 refund of overpaid rent to March 15, 2013. I find that the tenant has been repaid everything the landlord owes her.

In respect to the claim for illegal eviction for lack of one or two month's written notice, I find the tenant had one month's verbal notice. I find insufficient evidence to support the tenant's allegation that she was illegally evicted. Everything the parties did was done verbally and I find her notice to end tenancy was also verbal but the evidence points to it being an agreement between the parties rather than an eviction. At that point, the tenant could have brought an application for dispute resolution to have the verbal notice set aside based on sections 51 or 52 of the Act but instead she chose to move and the landlord agreed to refund her half of one month's rent plus her deposit (which she did). I find the landlord's evidence credible that she asked her to move based on the deteriorating condition of the expensive unit (so for cause) and not because she wanted to sell it immediately. I find the weight of the evidence is that the tenant was in agreement for she moved and the landlord agreed to refund money. I find this was not an illegal eviction.

I considered the tenant's lawyer's contention that the notice should legally have been in writing pursuant to section 52 of the Act and so the tenant should be compensated as though she had been given a two month notice in writing (or at least a one month). I find the tenant has not satisfied the onus of proving an illegal eviction or proving the landlord was evicting her on section 49 grounds for her own use of the property. I find that neither of these parties committed any of their arrangements to writing, neither of them exercised their legal options and I find the tenant did not prove it was an illegal eviction as the weight of the evidence is that there was some agreement. I find the landlord returned all of the overpaid rent plus her security deposit.

Conclusion:

I dismiss the application of the tenant in its entirety and I find them not entitled to recover filing fees for the application.

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 23, 2013

Residential Tenancy Branch