



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act*, for the return of the security deposit and for the recovery of the filing fee.

The landlord did not appear for the hearing. I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on March 15, 2013. Pursuant to section 90(a) of the *Act* I deem the landlord as having been served the documents on the fifth day after they were mailed or on March 20, 2013. I proceeded with the hearing in the landlord's absence.

The tenant attended the hearing and was given full opportunity to present evidence and make submissions. The tenant provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the tenant but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Did the landlord illegally terminate the tenancy? Is the tenant entitled to a monetary order for the return of rent, the security deposit and the filing fee?

Background and Evidence

The tenant testified that she entered into a tenancy agreement on July 19, 2012. The monthly rent was \$1,300.00 and prior to obtaining the keys the tenant paid a security deposit of \$1,300.00. A copy of the tenancy agreement was filed into evidence. The only tenant named on this agreement is AP.

During the hearing, the tenant testified that the keys were given to her on August 01, 2012 and that attempts by her boyfriend RM to move belongings into the rental unit failed, when the landlord did not permit him to do so. However in her written submission, the tenant offers contradictory information. She states that she received the keys on July 31, 2012 and in a note dated August 02, 2012 she informed the landlord that her boyfriend RM *"starts moving thins into the suite"*

In a note to the landlord dated August 04, 2012, the tenant informed the landlord that her boyfriend RM will be moving into the rental unit. The landlord responded that RM could move in only on certain conditions. The parties were not able to come to an agreement about the additional terms.

In a note dated August 09, 2012, the landlord informed the tenant that she was welcome to move in as the sole occupant of the unit as discussed and agreed upon in the original agreement. She also added that RM would not be permitted on the property.

The tenant responded to the landlord in a note dated August 10, 2012. The tenant stated *"Unfortunately in these circumstances I can not accept your offer to continue this lease on the terms you suggest, as I can no longer rely on the language of the lease as I understood it"*. The tenant returned the keys the landlord on August 11, 2012.

The tenant first applied for dispute resolution on August 15, 2012. Neither party attended the hearing on November 06, 2012. The tenant reapplied on November 22, 2012. The tenant stated that, she served the landlord with a notice of the second hearing on November 26, 2012. The tenant stated that it was on this date that the landlord was notified of the tenant's forwarding address. This matter was heard on February 28, 2013. The Arbitrator found that the landlord had not been properly served. The application was dismissed with leave to reapply.

In total the tenant filed three applications and is requesting the recovery of three filing fees paid. The tenant is also claiming the return of rent for August and the security deposit.

Analysis

Based on the oral testimony of the tenant and the documentary evidence filed by the tenant, I make the following findings. I find that the tenant entered into a fixed term lease starting on August 01, 2012 and which would end on July 31, 2013. The tenant named on the lease is AP.

I further find that four days into the tenancy, the tenant informed the landlord that her boyfriend would be moving in. At first the landlord agreed to permit him to move in on certain conditions but the tenant did not agree to the conditions. On August 09, 2012, the tenant informed the landlord that she would not be moving in.

Section 16 of the *Residential Tenancy Act* states 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.

Since the tenancy agreement was entered into on July 19, 2012, the obligations of both parties start from this date. The tenant's obligations include paying rent for the entire term of the tenancy. The tenant argues that the landlord repudiated the tenancy agreement and therefore she is not obligated to pay rent and is entitled to the return of rent paid for August 2012.

Based on all the documentary evidence and the oral testimony of the tenant, I find that the tenant was named as the only tenant on the tenancy agreement and wanted to have an additional person occupy the rental unit. The tenant refused to agree to the additional terms that the landlord wanted to add to the original agreement in order to accommodate the addition of another occupant.

The tenant was in a position to continue the tenancy as the sole occupant of the rental unit which is in keeping with the original agreement, but chose not to do so. Therefore, the tenant is liable for rent for the month of August.

Regarding the tenant's claim for the return of her security deposit, I find that the tenant's testimony regarding the date she gave her forwarding address to the landlord is vague. She stated that she provided the address along with her second notice of hearing on November 26, 2012.

Section 38(1) of the *Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the evidence by the tenant I find that the tenant provided her address to the landlord along with her application for dispute resolution for the return of the deposit. Since the matter was in dispute the landlord was not obliged to return the deposit prior to the hearing. However, after this hearing, the landlord has now been provided with the forwarding address and must return the security deposit to the tenant.

The tenant has not proven her claim for the return of rent for August. Therefore the tenant must bear the cost of filing her own application. The tenant must also bear the cost of filing prior applications.

Based on the undisputed testimony of the tenant, I find that the tenant has established a claim for the return of the security deposit of \$1,300.00. Pursuant to section 67, I am issuing a formal order for payment in this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$1,300.00**.

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: June 06, 2013

Residential Tenancy Branch