



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trafalgar Management Ltd in trust for S.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

The Landlord applied on February 28, 2013 for:

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

The Tenant applied on June 26, 2013 for:

1. An Order for the return of the security deposit – Section 38; and
2. 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 under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on September 1, 2012 for a fixed term ending on August 31, 2013.

The Tenant moved out of the unit on February 15, 2013 and paid \$250.00 for February

2013 rent. Rent of \$2,500.00 was payable monthly and at the onset of the tenancy the Landlord collected \$1,250.00 as security deposit.

The Tenant states that on January 28, 2013 the Tenant gave the Landlord notice that the tenancy would end on February 28, 2013. The Tenant states that she also asked for consent to sublet the unit to the end of the fixed term. The Tenant states that the Landlord was concerned with the Strata rules that require a one year lease and the possibility of fines. The Tenant states that she was concerned that she may be liable for fines and reviewed the Strata Act and Rules. The Tenant states that she determined that since the tenancy agreement provided for a sublease and the Strata Act and Rules prohibited subleases that the Strata Act and Rules applied to her tenancy. The Tenant states that given this conflict, the Strata Act and Rules also provided her with the opportunity to end the tenancy in 15 days. The Tenant states that she then informed the Landlord that the tenancy would end of February 15, 2013. The Tenant states that she deducted her moving expenses from the half month's rent that was payable for February 2013.

The Landlord states that after consulting with the Strata Corporation who confirmed that there was no problem with a sublease to the end of the fixed term the Landlord provided consent to the Tenant to sublet the unit on January 31, 2013. The Landlord states that the unit was advertised for rent starting February 19, 2013 with the last advertisement placed on March 13, 2013. The Landlord states that a new tenant was obtained for an April 15, 2013 start date. The quantum of the Landlord's claim is \$4,750.00.

Analysis

Section 2 of the Act provides that despite any other enactment this Act applies to tenancy agreements, rental units and other residential property. Although the Tenant argues that the Strata Act governs the ending of the tenancy, as the Tenant entered into a tenancy agreement with the Landlord to rent the unit, I find that the Act applies to the tenancy and to the obligations of the Tenant.

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the Tenant's evidence, I find that the Tenant failed to give sufficient notice to end the fixed term tenancy and is therefore liable for rent payable to the end of the fixed term.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord 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, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the undisputed evidence of the Landlord, I find that the Landlord took reasonable steps to advertise the unit and mitigate its losses in relation to the unpaid rent and did reduce its costs by obtaining a new tenant for April 15, 2013. I find therefore that the Landlord has substantiated that the Tenant owes **\$2,250.00** for February 2013 rent and **\$2,500.00** for March 2013 rent. I note that the Landlord did not claim unpaid rent for April 2013 in its application and did not amend the application to include any unpaid rent for April 2013. As the Landlord's application has been successful, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$4,800.00**. Setting the security deposit of **\$1,250.00** plus zero interest off this amount leaves **\$3,550.00** owed by the Tenant to the Landlord.

As the Landlord has been ordered to retain the security deposit against its claim, I find that the Tenant no longer has a claim to return of the security deposit and I dismiss the Tenant's application.

Conclusion

I Order the Landlord to retain the security deposit of \$1,250.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$3,550.00**. 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: July 15, 2013

Residential Tenancy Branch