



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD

Introduction

The hearing was convened to deal with an application by the tenant for the return of the \$400.00 security deposit paid under the Act, and a monetary order to reimburse the tenant for \$400.00 rent paid for the month of May, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to be compensated through a retro-active rent abatement for rent paid for the month of May 2013?

Background

The tenancy was to begin on May 11, 2013. No written tenancy agreement was created. The monthly rent was \$800.00 and the tenant paid \$400.00 rent for May 2013. A security deposit of \$400.00 was paid.

The parties testified that the tenant and the landlord met on May 10, 2013 at the rental unit to discuss the tenant's move in date scheduled for the following day, May 11, 2013.

The landlord testified that, it had been verbally agreed between the parties that the monthly rental period would run from mid month to the following mid-month and that the tenant would be required to pay \$800.00 for rent before the move-in date. According to

the landlord, the \$400.00 rent paid by the tenant was only a partial payment towards the first month with the \$400.00 remainder of the monthly rent payment due before the move-in date of May 11, 2013.

The landlord testified that on May 10, 2013, the tenant told the landlord that she no longer wanted to rent the unit and refused to pay the remaining \$400.00 owed for the period from May 15 to June 14, 2013.

The landlord testified that they denied the tenant access to the unit because she had not paid the full month of rent and the landlord acknowledged that they also refused to refund the tenant's partial rent payment and deposit.

The landlord testified that the tenant returned on May 22, 2013 and stated that she wanted move into the unit. The landlord testified that the tenant still refused to pay the remaining \$400.00 owed for rent for the period from May 15, 2013 to June 14, 2013 and the landlord therefore refused to allow the tenant to move in.

The landlord pointed out that they felt the tenancy had never started because the money that was owed for the first month's rent was not paid in full. The landlord's position is that they had a right to deny the tenant access to the unit until she paid the rest of the rent for the first mid-month to mid-month period.

The tenant testified that, when they entered into the verbal tenancy agreement, both parties agreed that the tenant would pay a \$400.00 security deposit and \$400.00 rent for the remainder of May 2013. The tenant testified that she receives funds at the end of the month and would never have consented to a tenancy with a mid-month payment schedule. According to the tenant, under the verbal agreement, her rent for the month of May 2013, was paid in full and the next rent payment of \$800.00 was not due until June 1, 2013.

The tenant testified that, when she spoke to the landlord on May 10, 2013, she advised the landlord that, although she was still willing to move in, the second bedroom in the unit was too small and therefore she would likely be giving her one-month notice to vacate shortly after taking occupancy. The tenant testified that she had suggested that, in the alternative, the tenancy agreement could be cancelled prior to moving in and the rent refunded. According to the tenant, the landlord refused to allow her to move in at all and repeatedly refused to refund her rent or security deposit.

Analysis - Start of Tenancy and Rent Payment Due Date

Section 16 of the 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.

Therefore I find that the tenancy was established when the tenant paid the funds and the parties verbally discussed the tenancy, agreeing that the tenant would take possession on May 11, 2013.

Section 30 (1) of the Act prohibits a landlord from unreasonably restricting access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Given the above, I find that the tenant was entitled to access the unit as of May 11, 2013.

I find that the landlord had unreasonably denied the tenant access to the rental unit despite the tenant's right under the Act to take exclusive possession of the residence on the agreed-upon effective date and in contravention of section 30 of the Act.

With respect to the landlord's argument that the parties had verbally agreed that the tenancy would run from mid-month to mid-month, making the tenant responsible to pay \$800.00 rent at the start of the tenancy, I find that this is allegation by the landlord is apparently based on verbal terms that were never properly recorded in a written tenancy agreement as required by the Act.

Section 13(1) of the Act requires that a landlord must prepare a written tenancy agreement. Section 1 of the Act defines tenancy agreement as, "*an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit*".

Although the Act acknowledges the validity of verbal terms, I find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis)

I find that disputed verbal terms are unclear. As such I find that they are not enforceable under the Act. Therefore, I find that the landlord's allegation that the parties had both agreed that the tenancy would run from mid-month to mid-month, based on an alleged verbal term, disputed by the tenant, was not sufficiently proven to be true. I accept that the tenant never agreed to this term.

Accordingly, I accept the tenant's testimony that her payment of \$400.00 for last half of May 2013, was done with the expectation that the next month's rent of \$800.00 would be due on June 1, 2013. I find that the next rental period would have commenced on June 2013, at which time the tenant would owe \$800.00 for rent..

I therefore find that on May 11, 2013, the move-in date, the tenant was not in arrears for any rent.

In any case, even if I accepted the landlord's testimony and found that the tenant had only paid part of the rent that was due, this would still not give the landlord a right to refuse access or arbitrarily terminate the agreement without going through due process under the Act.

Section 26 of the Act states that rent must be paid when it is due and if the tenant fails to comply, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. I find that a landlord would have to make an application and obtain an Order of Possession based on the Ten-Day Notice before the landlord could proceed to regain possession of the rental unit from the tenant. I find that the landlord did not follow this process as required by the Act.

I further find that nothing in the Act would give the landlord authority to suddenly refuse to relinquish possession of the unit, under the circumstances of this case.

Accordingly, I find that the tenant paid rent to reside in the rental unit for the latter part of May 2013 and was wrongfully prevented from taking possession of the rental unit by the landlord. I therefore find that the tenant is entitled to a full rent abatement of \$400.00 she paid for the month of May 2013.

Analysis - Security Deposit Claim

Section 38 of the Act deals with rights and obligations of a landlord and tenant in regard to the return of the security deposit. Section 38(1) states that, within 15 days of the end of the tenancy and receiving the forwarding address, a landlord

must either repay any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit.

I find that the landlord was holding the the tenant's \$400.00 security deposit in trust at the time that the tenancy was ended. I find that, by the end of May 2013, the landlord was duly served with the tenant's written forwarding address. I find that the 15 days for the landlord to either refund the deposit, or make application to keep it to pay for a liability, had expired without the landlord making an application seeking to retain the deposit for loss and damages.

Section 38(6) states that if a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security or pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit. Accordingly I find that the tenant is entitled to compensation of \$800.00 representing a refund of double the \$400.00 security deposit.

Based on the evidence before me, I find that the tenant is entitled to total monetary compensation of \$1,200.00, comprised of \$800.00 for double the security deposit and \$400.00 for loss of use of the rental unit for May 2013.

I hereby issue a monetary order in favour of the tenant in the amount of \$1,200.00. This order must be served on the Respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the claim and is granted a Monetary Order for double the security deposit and a retro-active rent abatement.

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: September 17, 2013

Residential Tenancy Branch

