



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and other issues.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on May 01, 2012 for a fixed term which expired on April 30, 2013. Rent for this unit was \$1,550.00 per month and was due on

the 1st of each month. The tenant paid a security deposit which was returned to the tenant on May 01, 2013.

The tenant testifies that he gave notice to end the tenancy on April 19, 2013 with an effective date of May 31, 2013. The tenant informed the landlord that if the landlord had the opportunity to re-rent the unit for May 01, 2013 the tenant would be happy to vacate the unit on that date. The landlord listed the unit for rent and the landlord indicated to the tenant on April 30, 2013 that a new tenant had been found for May 01, 2013 and asked the tenant if he was ready to vacate the unit. The tenant testifies he agreed to move out the next day and the landlord arranged and conducted a move out inspection with the tenant on May 01, 2013, the tenant returned the keys and the landlord returned the tenants security deposit.

The tenant testifies that after midnight on May 01, 2013 the tenant received an e-mail from the landlord's agent which said they could not finalize a new lease with the incoming tenant. The tenant testifies that he got this message before the meeting with the landlords other agent for the move out inspection. The tenant testifies that when he met with the landlords agent at 11.00 on May 01, 2013 the landlords agent conducted the move out inspection. That agent informed the tenant that it would just be a day or two before the new lease agreement was finalized. The tenant told that agent about the e-mail from the landlord and the agent informed the tenant that he was not to worry about it as AC was working on it. The tenant testifies that he had acted in good faith in vacating the rental unit as the landlord had requested. If the landlord then did not finalize a tenancy agreement with the incoming tenant then this is not the tenants fault. The tenant testifies that at no time did the landlord's agent say that if the new lease fell through the tenant would be responsible for May's rent.

The tenant testifies that on May 06, 2013 the landlord cashed the tenants rent check. On May 14, 2013 the landlord returned \$500.00 of this rent to the tenant. The tenant testifies as it was the landlord who asked the tenant to vacate the unit on May 01, 2013 it was the landlord who effectively ended the tenancy with the mutual agreement of the

tenant on May 01, 2013. The landlord should not therefore have cashed the tenants rent cheque for May and the tenant seeks to recover the balance of this rent to an amount of \$1,050.00.

The landlord's agent testifies that the tenant was considered to be an excellent tenant and the landlord was not trying to take advantage of the tenant. The landlord's agent testifies that when the tenant gave notice by e-mail to end the tenancy on May 31, 2013 the landlord accepted this Notice and agreed that would be the tenants last day. When the landlord started to show the unit in April there was little time to get a tenant for May. The landlords agent testifies that they had emailed the tenant after he requested that if the landlord had the opportunity to re-rent the unit that he would vacate sooner than May 31. The landlord's agent testifies that they said that if they could make that work then they would.

The landlord's agent testifies that on April 30, 2013 a lady called the landlord and said she would be interested in moving in as soon as possible. The landlord's agent testifies that she e-mailed the tenant and asked would the place be vacated and cleaned by the next day as the landlord had someone interested in moving in right away. The tenant replied and said yes let's do it, it will be empty, cleaned and ready to go for tomorrow. The landlord's agent testifies that she responded and said that's great will be in touch tonight so we can arrange a walk through and get the keys tomorrow and return the security deposit. There were then other e-mails back and forth to arrange a time to do the inspection.

The landlord's agent agrees that she e-mailed the tenant at 1.49 in the morning of May 01, 2013 to inform the tenant that the lease had not been finalized. The landlord's agent testifies that the lease was later finalized for May 04, 2013 however as they only received half a month's rent from the new tenant they cashed this tenants rent cheque for \$1,550.00 and returned \$500.00 of that to the tenant after the tenant requested a refund.

The tenant argues that as the landlord had cashed the tenants rent cheque the tenant was still legally the tenant until May 31 and the landlord should not have leased the unit to a new tenant and collected rent for that month also.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have reviewed the e-mail thread between the parties and conclude that the landlord did ask the tenant on April 30, 2013 at 1.28 p.m. if the unit would be totally vacated and cleaned by tomorrow as the landlord has someone interested in moving in right away and hopes to make it work for all of them. The tenant responded let's do it, it will be empty, cleaned and ready to go for tomorrow. The landlord replies and states she will be in touch later to arrange a time with the tenant to do the walk through, get the keys and return the deposit the next day. It was not until the early hours of the morning on May 01, 2013 that the landlords agent informs the tenant that the lease with the new tenant has not been signed.

According to this evidence I find it is clear that the landlord's agent did ask the tenant if he was ready to move out on May 01 and arranged an inspection with the tenant. The tenant returned the keys and the landlord returned the tenants security deposit. The tenant therefore acted in good faith by ensuring the unit was empty and cleaned for the landlord as requested and the landlord cannot then change their mind because the incoming tenant did not sign the lease.

It is therefore my decision that the landlord ended the tenancy on May 01, 2013 and the tenant is not responsible for any rent for May. As I side note I find that the landlord has stated that they collected only half a month's rent from the incoming tenant, although that tenant moved in on May 04, 2013, and also collected rent in the amount of \$1,050 from this tenant. A landlord is not entitled to collect rent twice for the same unit and as the landlord effectively ended the tenancy on May 01, 2013 then the landlord must bear the loss of any rental income for any days not paid for by the incoming tenant.

I therefore uphold the tenants claim to recover the rent of **\$1,050.00** and the filing fee of **\$50.00**.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 24, 2013

Residential Tenancy Branch

