



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding North America Fareast Trading Centre Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that she handed a copy of her dispute resolution hearing package to a representative of the landlords on July 22, 2013. She also said that she sent copies by registered mail and handed a copy to the father of the landlords' agent at the agent's residence. The agent confirmed that the tenant had served the landlords with the tenant's dispute resolution hearing package. I am satisfied that the tenant served her dispute resolution hearing package to the landlords in accordance with the *Act*.

The agent testified that she had provided the tenant with copies of the landlords' written evidence with the exception of a one-page handwritten letter to the Residential Tenancy Branch (the RTB). The tenant confirmed receiving the written evidence sent to her by the landlords. At the hearing, I advised the parties that I would only be able to consider the written evidence provided to the tenant. As such, I informed the parties that I could not consider the agent's one-page handwritten letter.

The tenant testified that she sent the landlords a copy of her written evidence package. However, she said that she had not provided copies of those portions of her written evidence sent to the RTB that involved her financial affairs (e.g., pay statement; account activity from her financial institution). I advised the parties that I could not consider those portions of the tenant's written evidence that were not provided to the landlords.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Is the tenant entitled to recover her filing fee from the landlords?

Background and Evidence

On June 4, 2013, the parties signed a Residential Tenancy Agreement (the Agreement) to commence on July 1, 2013 and to last until December 31, 2013. Monthly rent was set at \$1,500.00, payable in advance by the first of each month. Although the tenant paid a \$750.00 security deposit to the agent on June 4, 2013, both parties agreed that the landlords have now returned the tenant's entire security deposit to her.

Both parties submitted copies of only the first and last pages of the Agreement. Although I noted at the hearing that the completed portions of the faxed copies of these pages submitted by the tenant to the RTB were undecipherable, this did not present a problem, as both parties agreed to the contents of the two pages entered into written evidence by the landlords.

While the first and last pages of the Agreement were not in dispute, the parties provided conflicting oral testimony regarding section 18 of the Agreement, the pet clause, which appeared in portions of the Agreement that neither party entered into written evidence. Both parties agreed that the wording of this section of the Agreement stated that unless specifically permitted by the landlord, the tenant was prevented from keeping any pets (including dogs or cats) in the rental unit. The tenant testified that she discussed this provision with the landlords' building manager at the time of her signing the Agreement and the building manager agreed that she could keep a dog and cat in the rental unit. She testified that the landlords' building manager who signed the Agreement on the landlords' behalf initialled section 18 (as well as some other sections of the Agreement) signifying his agreement with her request to be allowed to keep pets in the rental unit. The agent testified that there was no such initial in the signed Agreement retained by the landlords for this tenancy. The building manager no longer works for the landlords.

The tenant entered into written evidence a June 20, 2013 letter from the landlords entitled "Re: Termination of Rental Agreement..." In this letter, the landlords confirmed that their building manager had advised the tenant that this rental complex did not allow for any pets and "therefore we are writing this letter to terminate our rental agreement with you if you are moving in with any pets." The landlords noted that they had not received a copy of the tenant's husband's employment confirmation that the tenant had agreed to submit. The landlords advised that if they did not hear back from the tenant by the end of June 25, 2013, "the rental agreement is terminated." Since the landlord

had terminated her Agreement without letting her move into the rental unit, the tenant had to seek alternate accommodations.

The tenant applied for a monetary award of \$4,000.00. The tenant entered into written evidence an itemized list of the items claimed in a Monetary Order Worksheet. This list included the following:

Item	Amount
Missed Pay	\$350.00
Bank Statement saying they (the landlords) took damage deposit	750.00
Money Loan from Money Mart – Wages Lost from Time off Work	116.85
First and Last Month's Rent	3,000.00
Moving, Stress & Leaving Belongings in Truck overnight for 3 days	533.15
Total of Above Items	\$4,750.00

As noted above, the tenant confirmed at the hearing that the landlords have returned her \$750.00 security deposit in full.

The tenant also maintained that the landlords had never returned the \$1,500.00 cheque she handed to the landlords' former building manager, post-dated to July 1, 2013. The agent testified that she has checked with the other landlord and neither the agent nor the other landlord has any cheque for July 2013 rent from the tenant.

Analysis

Section 16 of the *Act* reads as follows:

16 *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.*

In accordance with section 16 of the *Act*, this tenancy commenced on June 4, 2013, the date when the landlords' former building manager and the tenant signed the Agreement. Once that occurred, the landlords could only end this tenancy by one of the ways cited in section 44 of the *Act*. For example, if the landlords wished to end the tenancy because the landlords maintained that the tenant had not abided by the terms of the Agreement by contravening a pet clause in the Agreement, the landlords would have had to issue a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice). Any attempt to end a tenancy for cause could only occur once there was evidence that the

tenant had actually breached the terms of the Agreement. In other words, the landlords could not issue a 1 Month Notice on the basis of their concern that the tenant **might** be intending to breach the terms of their Agreement by bringing pets to the rental unit. Sections 46(2) and 52 of the *Act* require that a landlord end a tenancy in writing and that a landlord use the correct RTB form in ending any tenancy.

As noted at the hearing, I find that the landlord contravened the *Act* by refusing to allow the tenant to commence her tenancy on the stated date of the Agreement and by ending her tenancy without following the provisions of the *Act*, including the requirements of sections 44, 46(2) and 52 of the *Act*. I also note that section 5 of the *Act* prevents a party from contracting out of the provisions of the *Act*, as the landlords attempted to undertake in the June 20, 2013 letter to the tenant.

Section 7(1) of the *Act* establishes that a landlord who does not comply with the *Act*, the regulations or Agreement must compensate the tenant for damage or loss that results from that failure to comply. For the reasons outlined above, I find that the tenant is entitled to compensation for any proven damages or losses arising out of the landlords' failure to comply with multiple provisions of the *Act* and the terms of the Agreement.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

In this case, the tenant's claim is compromised by her failure to provide the landlords with a copy of statements she provided to the RTB in support of her application. Even if I were able to consider these portions of the tenant's claim (which I am not), I find that the tenant has not submitted sufficient evidence to substantiate her claim of the amount of lost wages she incurred as a result of the landlords' actions or that she was also entitled recover a loan over this period.

Section 7(2) of the *Act* places a responsibility on a party claiming compensation for loss resulting from the other party's non-compliance with the *Act* or a residential tenancy agreement to do whatever is reasonable to minimize that loss. In this case, the tenant testified that she had to take time off work on short notice to ensure that she and her family had a place to live. She testified that she was very lucky to find suitable alternative accommodations on June 30, 2013, to take occupancy on July 1, 2013. She testified that she is paying \$1,200.00 in monthly rent at her new rental premises.

I dismiss the tenant's application for a monetary award for the recovery of her first and last month's rent without leave to reapply. I do so as I find no evidence that the tenant has experienced losses in the amount of rent she is paying as a result of the landlords' actions. In fact, the tenant's effective actions in mitigating her losses have resulted in her paying \$300.00 less in monthly rent than she would have paid had the landlords not contravened the *Act* and their Agreement. As the tenant had committed to a six-month fixed term, these monthly rent savings will continue for a six-month period.

I have also considered the tenant's sworn testimony that she incurred costs because she had notified her previous landlord that she would be able to leave her previous premises on June 29, 2013. She said that she hired a truck to move her possessions from her previous location to the rental unit the landlords had committed to rent to her on June 29, 2013. The agent did not dispute the tenant's claim that the landlords' building manager had previously agreed to let her move her belongings into the rental unit on June 29, 2013. The tenant testified that the landlords' actions resulted in a \$533.15 extra charge for her use of the truck for three days as she had nowhere other than the truck to leave her belongings until she took occupancy of her new premises.

The agent questioned the tenant's claim that she incurred an additional \$533.15 fee for the extra nights she had to keep the rental truck for her move. The tenant would have been responsible for a one-day rental of a moving truck. By moving into her new premises on July 1, 2013, only two additional days may have been owing. The tenant confirmed that she had not submitted any receipt to substantiate the \$533.15 additional charge that she was claiming. She also confirmed that the additional charge was not itemized as a separate charge in the moving invoice she received.

I find that the tenant did not enter into written evidence copies of receipts that would demonstrate her actual expenses for her move or that she incurred additional charges of \$533.15. I also find the tenant had some time to either challenge the landlords' illegal attempt to prevent her from taking possession of the rental unit or to make alternative accommodation or moving arrangements. While none of these options may have been ideal, the tenant did have over a week to decide on a course of action, which could have reduced her costs. Although I am not willing to award the tenant the full amount she has claimed for her additional moving charges, I do find on a balance of probabilities that the landlords' actions resulted in considerable disruption to the tenant's life. She needed time to sort out her options, had to revise her plans to move into a rental unit where she had a signed Agreement with the landlords' representatives, and had to revise her previous plans for a one-day move from her previous rental premises. Under these circumstances, I find that the tenant is entitled to a monetary award of \$250.00 for damages and losses arising out of this tenancy. This amount is designed to

compensate the tenant for the difficulties and extra expenses caused by the landlords' precipitous contravention of their signed Agreement. The amount of this monetary award may have been higher had the tenant not been successful in finding alternative rental accommodations that were significantly lower than the monthly rent that she would have been paying at the rental unit had the landlords not contravened her Agreement and the *Act*.

In accordance with the powers delegated to me under the *Act*, I also order the landlords to return any monthly rent cheque that may be in the landlords' possession to the tenant as soon as the landlords become aware of the existence of any such cheque. I also order the landlords to not attempt to negotiate any monthly rent cheque from the tenant that may come into their possession.

As the tenant has been partially successful in this application, I allow the tenant to recover her \$50.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$300.00, comprised of a \$250.00 award to compensate her for losses and damages arising out of this tenancy and the \$50.00 recovery of her filing fee. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I order the landlords to return any monthly rent cheque that may be in the landlords' possession to the tenant as soon as the landlords become aware of the existence of any such cheque. I further order the landlords to not attempt to negotiate any monthly rent cheque from the tenant that may come into their possession.

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: October 15, 2013

Residential Tenancy Branch

