



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was the hearing of an application by the landlord. The hearing was conducted by conference call. The landlord attended with a person identified as her translator, but who was also the co-owner and landlord of the rental property. The tenant called in and participated in the hearing and was assisted by her friend, who acted as her translator.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

The rental unit is a suite in the landlord's house in Surrey. The tenancy began on June 1, 2012 for a one year term and thereafter month to month. Rent in the amount of \$800.00 was payable on the 30th day of each month. The tenant paid a \$400.00 security deposit at the start of the tenancy. The tenancy agreement provided that the tenant was responsible for paying 60% of the utilities each month.

The landlord testified that the tenant did not pay utilities from March 1st to August 1st and that she owed the landlord \$414.50 for utilities during that period. The landlord testified that the tenant moved out on August 1st, 2013 without giving notice. The landlord said that she only learned that the tenant had moved when the landlord attended to collect the rent on August 1st. The landlord claimed loss of rent for August in the amount of \$800.00. She testified that she was not able to re-rent the unit until September 10th, when a friend began to rent the unit. The landlord also claimed that the tenant did not properly clean the unit at the end of the tenancy and caused damage to the unit. She claimed payment of the sum of \$260.00 for cleaning and repairs, including the cost to dispose of a bunk bed left behind in the rental unit by the tenant. The landlord provided

a receipt for the work. She said the work was done by a friend and she paid him in cash for the work. The landlord did not conduct a condition inspection, either when the tenant moved into the rental unit or when she moved out.

With respect to the landlord's claim for unpaid utilities, the tenant said that she told the landlord in February that the utilities were too expensive and because of the expense, the tenant intended to move out. The tenant testified that the landlord did not want her to move out and offered that the utilities would be included in the rent starting in March if the tenant agreed to stay.

The tenant said that on June 24, 2013 she told the landlord that she was moving out of the rental unit on July 31st. She said that the landlord told her it was not necessary to give a written notice. The tenant testified that the landlord immediately started advertising the unit for rent. She submitted copies of what she said were internet advertisements for the rental unit that were placed by the landlord and included the landlord's telephone number. The tenant testified that the landlord brought at least five groups of people to view the rental unit while the tenant was still living in the unit. The first person who came to see the unit showed up just a day or two after the tenant gave notice on June 24th. The tenant submitted several copies of the advertisements she said were placed by the landlord on a local website.

The tenant disagreed with the landlord's claims for cleaning and damage. She said that the landlord asked to keep the bunk bed and the tenant agreed that the landlord could have it. The tenant said that the plumbing problems were not her fault. She said the sink in the bathroom was blocked and although she told the landlord about the problem on July 15th, the landlord did nothing and for the rest of July the tenant was not able to use the bathroom sink. The tenant denied causing other damage. She said when she moved into this 60 year old house the damage was already present. The tenant that the house was quite dirty when she moved in and she had to do extensive cleaning to make it liveable. She said it was properly cleaned when she moved out.

The tenant testified that on August 1st she was supposed to meet the landlord at the rental property to hand over the keys. Mr. T.D. attended; he was late. He refused to return the tenant's security deposit, kicked the tenants out of the house and called the police and then locked himself inside the suite for no reason. The tenant noted that she was there with her two small children, aged one and seven. When the police attended they told her that the landlord had promised to mail a cheque to her new address.

The landlord denied all of the tenant's testimony. She said that the advertisements provided by the tenant were not placed by her; she denied bringing any people to view

the rental unit when the tenant was there in June and July and she again said that she was not informed the tenant was moving before August 1st.

Analysis

The tenant claimed that starting in March the landlord agreed that utilities would be included in the rent and the tenant would not have pay additional amounts for utilities. I do not accept the tenants' position on this point because the tenant is attempting to introduce oral testimony to contradict the written terms of the tenancy agreement.

The following is a concise statement of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

It should be noted that there is a very sound basis for the rule for to consider any or every oral statement made by one party or the other during contract negotiations so as to vary, modify, or contradict the plain language finally adopted could throw the best written contract into doubt, and constant turmoil. Where a contract is clear and unambiguous, oral statements or reservations made by either party do not change it.

If terms of the contract are ambiguous or clearly susceptible to more than one meaning then parole evidence is admissible to show what the parties meant at the time of making the contract and how they intended it to apply.

In the present case there is no ambiguity in the written tenancy agreement; it is signed by both parties and it states unequivocally that the tenant is responsible for 60% of the utilities. In these circumstances, although the conduct of the parties with respect to payment of utilities may be ambiguous, the contract is not. I therefore find that the tenant is responsible for utilities as claimed by the landlord in the amount of \$414.50.

With respect to the claim for loss of rent for August, I accept the tenant's evidence that she gave the landlord verbal notice on June 24th that she would move at the end of August. Although the tenant did not give written notice as required by the *Residential Tenancy Act*, I find that a lack of written notice was not the cause of the landlord's failure to re-rent the unit for the month of August. I accept the tenant's evidence, exemplified by the internet advertisements provided, that the landlord began efforts to

re-rent the unit in June, after she gave notice and I accept the tenant's evidence that the landlord, or her associate brought prospective tenants to view the rental unit beginning in June. I prefer the tenant's evidence on these points because it accords with the evidence submitted by the tenant and because I found the landlord's testimony about a visit to the rental unit to collect rent on August 1st to be unbelievable. I find that the tenant is not responsible for the landlord's failure to secure a tenant for August and I deny the landlord's claim for August rent.

With respect to the landlord's claim for cleaning and repairs, there was no condition inspection performed when the tenancy began or when it ended. The tenant testified that the landlord was notified of plumbing problems but did not attend to address them. She testified that the rental unit was properly cleaned at the end of the tenancy. I accept the tenant's evidence that she left the bunk bed because the landlord asked to have it. The landlord has the burden of proving on a balance of probabilities that the tenant damaged the rental unit and did not leave it acceptably clean at the end of the tenancy. I find that she has not met that burden and I dismiss the landlord's claim for cleaning and repairs without leave to reapply

Conclusion

The landlord has succeeded in her claim for payment of utilities. The remainder of her claims have been dismissed without leave to reapply. I award the landlord the sum of \$414.50 for utilities and I award the landlord \$25.00 of the \$50.00 filing fee, for a total award of \$439.50. I order that the landlord retain the \$400.00 security deposit that she holds in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$39.50. This order may be registered 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: November 19, 2013

Residential Tenancy Branch

