



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lona Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF
MNSD, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee. The tenant attended and gave affirmed testimony.

The tenant testified that she served the landlord with the application for dispute resolution and notice of hearing (the “hearing package”) by way of registered mail. Despite this, and despite the scheduling of the hearing in response to applications by both parties, the landlord did not appear.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement which was signed by the parties on August 15, 2013, the fixed term of tenancy is from September 1, 2013 to August 31, 2014. A security deposit of \$400.00 was collected on August 15, 2013, and the tenancy agreement provides that monthly rent of \$800.00 is due and payable in advance on the first day of each month.

The tenant testified that while certain cleaning and repairs / renovations had not been completed in the unit on August 15, 2013, the landlord assured her that all cleaning and repairs / renovations would be completed by the start of tenancy. Thereafter, the

parties agreed that the tenant could take possession of the unit on August 30, 2013 and that unit keys would be provided to her on that same date. The tenant testified that her understanding was that a move-in condition inspection and report would also be completed on August 30, 2013. However, when the tenant attended the unit on August 30, 2013, she found that cleaning and repairs / renovations had not been completed. Further, the tenant did not consider it appropriate to delay the move-in condition inspection until September 3, 2013. The tenant informed the landlord verbally on this occasion that she would not be proceeding with the tenancy, and later that same day she returned the unit keys.

Submitted into evidence by the landlord is a move-in condition inspection report completed by the landlord in the tenant's absence on September 3, 2013.

Subsequently, by letter dated September 7, 2013, the tenant informed the landlord that for a variety of reasons she would "not be renting the unit." In her letter she requested the return of her security deposit and provided a forwarding address. The tenant also put a stop payment of her rent cheque. Thereafter, the landlord filed an application for dispute resolution on September 12, 2013. The tenant's application for dispute resolution was filed on September 18, 2013.

Analysis

Section 16 of the Act speaks to the **Start of rights and obligations under tenancy agreement**:

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.

Section 45 of the Act addresses **Tenant's notice**, in part as follows:

45(2) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence, the affirmed / undisputed testimony of the tenant, and in consideration of the above statutory provisions, the various aspects of the applications and my findings around each are set out below.

LANDLORD

\$800.00: *unpaid rent for September*

\$800.00: *unpaid rent / loss of rental income for October*

\$50.00: *filing fee*

I find that even while the tenant did not occupy the unit, a fixed term tenancy agreement was entered into by the parties for commencement effective September 1, 2013. Additionally, I find that while the tenant verbally informed the landlord on August 30, 2013 that she would not be proceeding with the tenancy, the tenant's formal written notice to end tenancy was not provided until later on September 7, 2013 by way of a letter. Notwithstanding that the tenant gave written notice to end tenancy by way of the aforementioned letter, I find that this manner of giving notice to end a fixed term tenancy does not comply with the above statutory provisions. In the result, I find that the landlord has established entitlement to unpaid rent for September 2013 in the amount of \$800.00. As the landlord has succeeded with this aspect of her application, I find that she has also established entitlement to recovery of the \$50.00 filing fee [**total entitlement: \$850.00**].

I order that the landlord retain the security deposit of **\$400.00**, and I grant the landlord a **monetary order** for the balance owed of **\$450.00** (\$850.00 - \$400.00).

In the absence of any documentary evidence or testimony from the landlord in relation to when new renters were found for the unit, or what efforts were undertaken by the landlord to mitigate the loss of rental income, the landlord's application to recover unpaid rent / loss of rental income for October 2013 is hereby dismissed.

TENANT

\$800.00 (2 x \$400.00): *the double return of the security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the

landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, the tenant provided her forwarding address in writing by way of letter dated September 7, 2013. The landlord filed an application for dispute resolution 5 days later on September 12, 2013. Accordingly, I find that the doubling provisions of the Act do not apply. In the result, this aspect of the application is dismissed.

\$15.00: fee assessed for stop payment on rent cheque

Following from my finding, as above, that the tenant's manner of ending the fixed term tenancy does not comply with the Act, the application to recover the fee arising from a stop payment put on the rent cheque is hereby dismissed.

\$50.00: filing fee

As the tenant has not succeeded with the principal aspects of her application, her application to recover the filing fee is also dismissed.

I order that the landlord retain the security deposit of **\$400.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$450.00** (\$850.00 - \$400.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$450.00**. Should it be necessary, this order may be served on the tenant, 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: December 19, 2013

Residential Tenancy Branch

