



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC

Introduction:

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order pursuant to Section 67 for a refund of rent.

SERVICE:

Both parties attended and the landlord agreed she received the Application for Dispute Resolution by registered mail. I find that the landlord was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to a refund of the rent paid for July 2013?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The parties agreed the premises had two floors, the landlord lived on the top floor and the 4 bedrooms in the lower area were rented to 4 different persons. The lower area had two sides, West and East with a lockable partition between. The two tenants in the East side shared a bathroom and the two in the West side shared a bathroom and all four tenants shared a common living room and kitchen.

The parties agreed the tenant toured the home on June 26, 2013, agreed to rent one of the bedrooms on the East side, signed a fixed term tenancy agreement for one year, and paid a security deposit and half of one month's rent to hold the unit until August 1, 2013. The landlord said this was a negotiation as she would have preferred to rent the unit for July 2013. The parties agreed the tenant called the landlord on July 15 or 16 and the tenant told the landlord she no longer wanted to rent the unit as there was a male living on the lower floor. Her father did not want her living in a home with males.

The tenant said the landlord verbally promised that only females would be occupying the lower floor and she broke her promise and rented to a male. The landlord said that she told the tenant that each side would only have girls or boys on the same side as

they would share a bathroom. She would not have rented the other room on the East side to a male if this tenant was occupying the East side. The male was on the West side. Both parties agreed that there was nothing in the written tenancy agreement concerning male or female occupancy. The landlord said when the tenant told her she was breaking the fixed term lease, she chose to end the tenancy on July 16, 2013 and refunded the tenant's security deposit. She kept \$332.50 which was half of one month's rent for July; she held the unit for the tenant and lost rent for the whole month.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus of proof is on the tenant to prove that she is entitled to a refund of rent paid for July 2013. I find the tenant entered into a contract with the landlord (a tenancy agreement) to rent the unit for a year and paid one half of one month's rent (\$332.50) for one half of July to hold the unit. I find the written contract had no conditions concerning male or female rental. The contract obligated the tenant to pay rent to the landlord in the amount of \$665 a month until the end of the tenancy. I find the tenant broke the tenancy agreement.

I find the landlord relied on the contract and lost rent for July 2013; she stated that she chose to accept the end of the tenancy as of July 16, 2013 and accept the half of one month's rent that was paid for July. The landlord denies she made a promise to only rent the whole lower floor to female students and states that the tenant may have misunderstood the situation. In any case, I find an alleged verbal promise does not over ride a written tenancy agreement. I find the tenant has not proved on the balance of probabilities that she is entitled to the refund of the rent she paid.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply.

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 11, 2013

Residential Tenancy Branch