



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding One West Property Corp "In Trust" for Northwest
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent and to recover the fee for filing an Application for Dispute Resolution. The Landlord stated that the Application for Dispute Resolution was served to the Tenant, via registered mail, on December 13, 2013. The Tenant acknowledged receipt of the Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of the security deposit. The Tenant stated that the Application for Dispute Resolution was served to the Tenant, via registered mail, on an unknown date. The Tenant acknowledged receipt of the Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted no evidence in this matter.

On February 04, 2014 the Landlord submitted a package of evidence to the Residential Tenancy Branch. The Landlord stated that a copy of this evidence was served to the Tenant, via registered mail, on February 04, 2014. The Landlord cited a Canada Post tracking number that corroborates that testimony.

The Tenant stated that the package of evidence has not been received. The Landlord checked the Canada Post website during the hearing and stated that the website shows the package has not yet been delivered to the recipient.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is posted. On the basis of this deeming provision, the

Landlord could reasonably expect the evidence to have been received by the Tenant on February 09, 2014, which is only 3 days before the date of the hearing.

The deeming provision in the *Act* is only to be relied upon if there is no evidence regarding the actual date a document is received. As the Tenant has declared that she has not yet received the evidence, and her testimony is corroborated by the Canada Post website, I find that the evidence has not yet been received by the Tenant. As the Tenant has not received the evidence, it was not accepted as evidence for these proceedings.

In determining that it was appropriate to exclude this evidence package, I was influenced, in part, by the fact that it was not served in accordance with the timelines established by rule 3 of the Residential Tenancy Branch Rules of Procedure. In determining that it was appropriate to exclude this evidence package, I was also influenced by the fact that the Landlord filed the Landlord's Application for Dispute Resolution on December 12, 2013, and the Landlord had ample time to submit evidence in accordance with the Residential Tenancy Branch Rules of Procedure.

Upon being informed that the Landlord's evidence package was not being accepted as evidence, the Landlord opted to withdraw the Landlord's Application for Dispute Resolution.

Issue(s) to be Decided:

Is the Tenant entitled to a rent refund and should the security deposit be refunded to the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that they entered into a fixed term written tenancy agreement for this rental unit, the fixed term of which was to begin on November 01, 2012 and to end on October 31, 2013. The parties agree that the tenant agreed to pay monthly rent of \$2,400.00 by the first day of each month and that the Tenant paid a security deposit of \$1,200.00.

The Landlord and the Tenant agree that the Tenant was provided with the keys to the rental unit on October 13, 2013 and that she was permitted to move into the rental unit on that date, with the understanding that she would pay rent of \$500.00 for October of 2013.

The Landlord stated that the Tenant provided a cheque for rent for October, in the amount of \$500.00, and that the Landlord has been unable to cash that cheque as the Tenant placed a "stop payment" on the cheque. The Tenant stated that the \$500.00 rent was paid in cash and that she did not place a "stop payment" on a rent cheque. The Tenant is seeking a refund of this payment, as she did not move into the rental unit.

The Tenant stated that when she went to the rental unit on October 13, 2012 she determined that the rental unit needed cleaning, that there were holes in the wall, and several areas of the rental unit needed painting.

The Tenant stated that on October 14, 2012 she contacted the building manager for the purposes of booking the elevator for moving into the rental unit and was advised that she could not book the elevator because the Landlord had not provided the proper paperwork for this tenancy. She stated that she was intending to move into the rental unit on October 17, 2012.

The Tenant stated that she left a message for the Landlord on October 14, 2012; that he returned her phone call several hours later; that the Landlord informed her that he had attempted to contact the building manager but had been unable to speak with her; that the Landlord had a poor attitude when they spoke on October 14, 2012; that she concluded that there would be a lot of problems with the tenancy, so she told the Landlord she did not wish to move into the rental unit.

The Landlord stated that he spoke with the Tenant on October 14, 2012; that she informed him that she believed the rental unit needed cleaning; that the Tenant informed her that the building manager needed a "Form K" before the Tenant could move into the rental unit; and that she informed him that she did not like the rental unit so she was not moving in.

The Landlord stated that he had previously provided the building manager with a "Form K"; that he tried to contact the building manager to make arrangements to provide a "Form K", but he was having trouble contacting the building manager, as October 14, 2012 was a Sunday; and that he believes the Tenant was having problem booking the elevator for moving, as he understands the elevator cannot be booked on a Sunday.

The Landlord stated that he told the Tenant he would have the rental unit cleaned and the holes in the wall repaired, and that the holes in the wall were small holes that were caused by the previous occupant mounting a television on the wall. He stated that the Tenant declined these offers.

The Landlord and the Tenant agree that the keys were returned to the Landlord's office on October 15, 2012 or October 16, 2012. The Tenant stated that the Landlord was provided with a forwarding address for the Tenant, via email, although she does not recall when the email was sent. The Landlord agreed that the Landlord received a forwarding address for the Tenant, via email. He stated that he believes the address was received on November 03, 2013 or November 04, 2013.

Analysis

On the basis of the undisputed evidence, I find that the rental unit needed additional cleaning at the start of the tenancy, that some small holes in the wall of the rental unit needed repairing at the start of the tenancy; and that the Landlord offered to clean the

unit and repair the minor damage. As these deficiencies with the rental unit were relatively minor and the Landlord expressed a willingness to remedy the deficiencies, I find that the Tenant did not have the right to end the tenancy on the basis of these deficiencies. In reaching this conclusion I was heavily influenced by the fact that the Tenant did not intend to move into the rental unit until October 17, 2012, so the cleaning/repairs could have been completed with a minimum of inconvenience to the Tenant.

On the basis of the undisputed evidence, I find that the building manager was interfering with the Tenant moving into the rental unit because the building manager believed a "Form K" had not been submitted. I find that the Tenant did not have the right to end the tenancy on the basis of this administrative error. In reaching this conclusion I was heavily influenced by the fact that the Tenant was not intending to move into the rental unit until October 17, 2012, so the "Form K" could have been provided to the building manager on Monday, October 15, 2012.

Section 45(3) of the *Residential Tenancy Act (Act)* authorizes a tenant to end a tenancy if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. Even if I accepted that the need for cleaning/repairs and the absence of a "Form K" were material terms of the tenancy, I find that the Tenant would not have had a right to end the tenancy on the basis of those issues because the Tenant did not provide the Landlord with written notice of the breaches and the Tenant did not give the Landlord a reasonable opportunity to remedy the breaches.

As the Tenant did not have the right to end the tenancy pursuant to section 45(3) of the *Act* and the Tenant did not give the Landlord written notice to end the tenancy in accordance with section 45(2) of the *Act*, I find that the Tenant was obligated to pay the rent the Tenant agreed to pay for October of 2012. I therefore dismiss the Tenant's application to recover the \$500.00 she alleges was paid for October of 2012.

On the basis of this undisputed evidence, I find that this tenancy had ended by October 16, 2012, pursuant to section 44(1)(d) of the *Act*, when the Tenant abandoned the rental unit.

Section 39 of the *Act*, stipulates that a landlord may keep a tenant's security deposit and the right of the tenant to the return of the security deposit is extinguished if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy. On the basis of the undisputed evidence, I find that the Tenant provided the Landlord with a forwarding address on November 03, 2013 or November 04, 2013, which is more than one year after the end of the tenancy. I therefore dismiss the Tenant's application for the return of the security deposit.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed.

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: February 14, 2014

Residential Tenancy Branch

