



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIVERSITY PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant applied for return of the security deposit and monetary compensation for damage or loss under the Act, regulations and tenancy agreement. The disposition of the security deposit was dealt with by way of a decision I issued January 17, 2014, along with other issues, and that decision should be read in conjunction with this decision. Therefore, this decision deals with the tenant's claim for damage or loss under the Act, regulation or tenancy agreement only..

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

On March 13, 2013 the landlord executed a written tenancy agreement with the tenant and six other co-tenants for a fixed term tenancy set to commence September 1, 2013 at the monthly rent of \$3,995.00 and end on August 28, 2014.

By way of an email the landlord sent to the tenant on August 30, 2013 the landlord requested an address at which to send a refund of the security deposit. On August 31, 2013 the tenant called the landlord during which conversation the landlord verbally advised the tenant the tenancy was over. The tenant also responded to the landlord via an email she sent on August 31, 2013 indicating she was prepared to provide all necessary documentation on September 1, 2013; that she was devastated that the

landlord was terminating the agreement without any notice; and, she asked if the landlord knew of anyone looking for renters.

The tenant sought her father's assistance and in response the tenant's father contacted the landlord by telephone on August 31, 2013. During that conversation the tenant's father communicated how unfair the landlord was being to the tenants and the landlord indicated that the unit was already re-rented.

The tenant was forced to find alternative accommodation in a very short amount of time as university classes were about to commence. The tenant searched the internet and ultimately found a friend that was looking for a roommate. The tenant "skyped" with her friend's landlords the evening of August 31, 2013 and secured a tenancy for September 1, 2013.

The tenant submitted that she is currently paying rent of \$535.00 per month for shared accommodation of the basement suite she rents on a month to month basis; whereas, her share of the monthly rent for the rental unit would have been \$400.00 per month for a shared bedroom and shared use of the common areas. The tenant is seeking to recover the rent differential of \$135.00 per month for the duration of the fixed term (12 months) for a total of \$1,620.00. The tenant provided rent receipts showing payment of \$535.00 per month at her current rental accommodation.

In addition to the rent differential, the tenant is seeking compensation of \$1,500.00 (calculated as 30 hours at \$50.00 per hour) for time spent dealing with this matter. The tenant submitted that she spent time finding alternative accommodation; and, that she and her family tried to retrieve the security deposit and prepare the dispute resolution package. Although the tenant is a student, the tenant explained that the hourly rate reflects her father's time spent assisting her with the matter.

Finally, the tenant seeks recovery of registered mail costs incurred to re-send the landlord's Application for Dispute Resolution to the other six co-tenants since the landlord sent hearing packages for all of the co-tenants to her forwarding address. This portion of the tenant's claim was dismissed summarily as the tenant was not required to take this action.

Through questioning by the landlord, the following factors were raised:

1. The tenant's current rent of \$535.00 includes all utilities including internet and cable; whereas, the rent for the rental unit did not include utilities. The parties were in dispute as to how much utilities would have cost at the rental unit. The tenant submitted that the landlord's female agent had advised the tenants that utilities would be approximately \$20.00 - \$30.00 each per month each. The landlord doubted this estimate but did not produce the female agent to counter the tenant's statement or any utility bills.
2. The tenant's current rental accommodation provides the tenant with the benefit of her own bedroom and use of larger common areas shared by fewer people; whereas, the rental unit provided the tenant with a shared bedroom and use of smaller common areas shared by more co-tenants.

The landlord questioned the veracity of the tenant's evidence with respect to her current monthly rent, pointing out that she did not produce a tenancy agreement or banking records to support what is reflected on the receipts. The tenant responded by stating that her current landlord did not prepare a written tenancy agreement and that the rent receipts, issued by her current landlord, are sufficient to show the amount of rent she is currently paying.

The landlord pointed out the tenant did not produce evidence to support her contention that her share of the monthly rent at the rental unit would have been \$400.00 per month and suggested that if rent were allocated to each co-tenant equally her rent would be 1/7 of \$3,995.00 or \$570.00 which is greater than her current rent. The tenant acknowledged that her obligation to pay \$400.00 per month reflected a shared bedroom and was agreed upon between the co-tenants verbally.

The landlord took the position that the tenant's request for compensation for \$1,500.00 for her time spent dealing with this dispute is outrageous given the relatively short amount of time she spent finding alternative accommodation.

Finally, the landlord asked whether the tenant showed up at the rental unit on September 1, 2013. She responded that she did not because the landlord had already informed the tenant's father that the unit was re-rented. The landlord acknowledged that he had re-rented the unit and that the new tenants had some possessions in the rental unit, but claimed he could have easily removed those new tenants if necessary.

The landlord was of the position that the tenants were in breach of the tenancy agreement; however, the landlord acknowledged that he did not end the tenancy in a

manner that complies with the Act. Nevertheless, the landlord took the position that despite his breach of the Act the tenant bears the burden to prove her loss, which he contends she did not do.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based upon everything presented to me, I provide the following findings and reasons with respect to the tenant's claim for compensation.

I am satisfied the landlord breached the requirements of the Act by terminating the lease and not providing the tenants with occupation of the rental unit. As I informed the landlord at the hearing, several of the terms in the tenancy agreement were non-compliant with the Act and when a term in the tenancy agreement conflicts with the Act the term is not enforceable. Nevertheless, where a tenant does violate an otherwise enforceable term of the tenancy agreement, the landlord's remedies are as provided by the Act. For example: a breach of a material term of the tenancy agreement requires the landlord to put the tenant on written notice as to the breach and only if the tenant does not correct the breach within a reasonable amount of time may the landlord proceed to issue a 1 Month Notice to end Tenancy for Cause. That 1 Month Notice is disputable and in any event gives the tenant at least one full month to vacate the unit. A landlord's remedy does not include withholding occupation of the rental unit from the tenant or illegally evicting a tenant, which is what the landlord did in this case. Further, I seriously doubt the landlord could have removed the new tenants from the rental unit in a manner that complies with the Act. Therefore, I find the landlord's failure to comply with the Act to be egregious especially considering his refusal to permit occupation was communicated only two days before the tenancy was set to commence, leaving the tenant in a precarious situation.

Increased rental costs

I found the tenant to be highly credible given her testimony and responses during examination by myself and the landlord. As such, I accept that her share of the monthly rent at the rental unit was to be \$400.00 since she was going to share a bedroom at the rental unit.

Since the rent currently payable by the tenant includes utilities, I find it appropriate to compare her current rent payment with the rent and utilities the tenant would have had to pay at the rental unit. I accept the tenant's testimony in the absence of any appearance by the landlord's female agent that the utilities were estimated by the landlord's agent to be \$20.00 – \$30.00 for each co-tenant. I find this estimate reasonable given there were to be seven co-tenants sharing the utilities.

In light of the above, I find it reasonable to conclude the tenant has incurred greater accommodation expenses of \$105.00 per month [$\$535.00 - \$400.00 - \30.00] due to the landlord's breach of the Act.

Although the tenant's current rental unit is larger and shared by fewer co-tenants I take notice and take into consideration that the tenant had only one or two days to secure alternative accommodation because of the landlord's egregious actions at a time when most rental units in the proximity of the university are already taken. I find it highly likely that the tenant's choices for an affordable rental unit in proximity to the university were severely restricted given the extremely short notice she received from the landlord and considering the university classes were about to commence. I am also satisfied that the tenant acted diligently to minimize her losses by finding shared accommodation in a short amount of time. Considering these factors, I grant the tenant's request to recover rent differential of \$105.00 per month for 12 months, or \$1,260.00.

Other losses

Considering the egregious conduct of the landlord as described above and the extremely short notice he gave to the tenant, I have no doubt the tenant was devastated and had to scramble to secure alternative accommodation which likely consumed most of her time for nearly two days. However, I find the hourly rate of \$50.00 that the tenant is claiming is excessive and should not reflect volunteer efforts by a third party.

Although the tenant was a student and not working I find that her time to be nonetheless valuable. Given these considerations, I find it appropriate to estimate an award pursuant to the authority afforded me under the Act. I award the tenant \$150.00 for the time spent trying to find alternative accommodation. I make no further award for her time as preparing for and participating in a dispute resolution proceeding are not compensable under the Act.

Filing fee and Monetary Order

As the tenant was largely successful in establishing a claim against the landlord I award the tenant recovery of the \$50.00 filing fee she paid for her application.

Provided to the tenant with this decision is a Monetary Order in the sum of \$1,460.00 [\$150.00 + \$1,260.00 + 50.00]. To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$1,460.00 to serve upon the landlord and enforce as necessary.

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: March 13, 2014

Residential Tenancy Branch

