



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Park Lane Towers Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, O, MNR, FF

Introduction

This hearing was convened in response to an application by the tenant for an order for the return of the security deposit and a cross-application by the landlord for a monetary order and an order allowing her to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. This tenancy lasted for 17 years, ending upon the death of the tenant on November 7, 2013. The tenant's daughter (the "Executrix") advised the property manager of the tenant's death shortly after it occurred and told him that she intended to have the rental unit vacated at the end of November.

On or about November 27, the Executrix and the property manager signed a document entitled "Security Deposit Statement" in which the property manager indicated that the \$437.00 security deposit and the \$67.59 in interest which had accrued since the beginning of the tenancy would be returned in full to the tenant.

On December 2, the landlord issued a cheque payable to the deceased tenant. This cheque was received by the Executrix on or about December 8. The Executrix returned the cheque to the landlord, asking that the cheque be reissued in her name. The landlord refused to return the cheque, claiming that the tenant owed rent for the month of December as she had given insufficient notice that she was ending her tenancy.

The landlord took the position that because the tenant and Executrix had failed to provide one full month notice as per section 45(1) of the Act, section 53 of the Act operated to automatically change the effective date of the notice to December 31, 2013. The landlord testified that she attempted to re-rent the unit and in November believed she had a new tenant secured for the month of December, but in December learned that the new tenant had changed their mind.

Analysis

The landlord's statement of the law is accurate. Tenants are obligated to provide one full month notice to end their tenancy and should they not do so, the effective date of their notice is changed to comply with the legal requirement. However, I find that the landlord made a representation to the Executrix at the end of November that the entire security deposit would be returned and on December 2, when the landlord should have known that she had not yet secured a tenant for the month of December, the landlord returned the security deposit. I find that the Executrix acted in reliance on that representation and returned the cheque to be reissued, fully expecting the landlord to act consistently with what the property manager had communicated to the Executrix.

I find that the landlord's actions in agreeing on November 27 to return the entire security deposit and actually returning the deposit on December 2 amount estop the landlord from now claiming against the deposit. Estoppel is an equitable principle which stops a party from reneging on an agreement when the other party has acted in reliance on that agreement. For this reason, I dismiss the landlord's claim for unpaid rent for December.

I order the landlord to return the \$437.00 security deposit and the \$67.59 in interest and I award the Executrix \$504.59. I note that the Executrix did not make a claim for the recovery of her filing fee and I therefore have not awarded the filing fee.

Conclusion

The landlord's claim is dismissed and the tenant is granted a monetary order under section 67 for \$504.59. This order may be filed in the Small Claims Division of the Provincial 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: April 11, 2014

Residential Tenancy Branch

