



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Suiteliving Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The tenancy agreement signed by the parties on January 21, 2013 indicates there was a fixed term tenancy from January 21, 2013 to January 31, 2014, and the tenant was obligated to pay \$2,100.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$1,050.00.

The tenant is a corporation that sublets rental units to its clients. The tenant advised the landlord by email on November 26, 2013 that her clients intended to move out. The portion of the November 26, 2013 email exchange between the parties that was provided in evidence reads:

Tenant: "Our client has informed us that they will be leaving the suite earlier than expected. I know our lease doesn't end until Jan but since the suite will be empty Dec 28th, I was hoping you can start posting/showing the suite so

hopefully you can find another tenant for Jan 1st. I know from being in the industry awhile that Jan is a busy relocation season so I didn't want you to miss the boat on finding another long term tenant.

If you happen to find a tenant for Jan 1st, just let me know and we'll vacate the suite on Dec 31st."

Landlord: "Hi [Name] – do you have any other interested clients?"

Tenant: "No, not at the moment but we'll keep marketing it and let you know if we find anybody else."

Landlord: "What I meant to confirm is that you're still expecting to pay rent until January 31st unless we are able to rent it prior – correct?
Please confirm."

Tenant: "Let me check with RTA and get back to you..."

The parties continued to exchange email regarding the rental unit in December 2013 and January 2014. The following December 7, 2013 email exchange addresses the move-out schedule:

Landlord: "With a lot of efforts, we managed to find a Potential Tenant who is willing to move in on JANUARY 1st 2014. They will be coming over to sign the papers on Monday December 9th 2013. But before we get the papers signed, please confirm the following dates for the Move at your earliest:

December 27th 2013 Current client is moving out

December 28th 2013 [Tenant] will be cleaning the place and will hand over the keys to the Landlords

December 29th & 30th, 2013 Hoping we can get the Movers, the Landlord will take the Inventory and Move the Furniture since it will now be rented "Unfurnished"

December 31st 2013 The Landlords will clean the place

January 1st 2014 The New Tenants will move in

As you can appreciate, because of the Festive Holiday season, it is almost impossible to get Movers and the Cleaners during the holiday weekend. If we do, they will charge arm & a leg. However we will do everything we can to accommodate your request. We intend to be supportive, but believe in a mutually fair outcome. [...]"

Tenant: "This schedule looks good. We'll aim to have suite cleaned and keys back to you by Dec 28th. I assume we should have all bedding washed and bagged since you're moving the next day?"

The parties also exchanged email regarding whether the entire security deposit would be returned, but they were not able to reach agreement.

The tenant gave evidence that she provided a forwarding address to the landlord in writing. She states she received \$711.06 as a partial refund of her security deposit by mail on about January 13, 2014.

The tenant seeks an order for double her security deposit, as well as a partial refund of December 2013 rent. The tenant gave evidence that the landlord requested the tenant vacate the rental unit early (prior to December 31, 2013) so that the landlord could move furniture out of the suite.

The landlord denies that he asked the tenant to vacate the rental unit earlier than the tenant's clients were planning to vacate anyway. The landlord's evidence is that the tenant agreed to the timing of the move-out, and the tenant did not indicate at the time that she wanted a partial refund of December 2013 rent.

The landlord gave evidence that he was able to find a new tenant for January 1, 2014 however the new tenant rented the rental unit unfurnished and so the rent was \$350.00 less than the rent paid by the tenant in this application. His evidence is that he incurred a rental income loss of \$350.00 for the month of January 2014 as a result of the tenant moving out one month before the end of the fixed term. The landlord's evidence is that he deducted the \$350.00 from the tenant's security deposit.

The tenant gave evidence that, had she known the landlord would claim a loss in rental income for the month of January 2014, she would have found someone to live in the rental unit for that month. The landlord's evidence is that strata bylaws prohibit rental terms of less than one year.

Analysis

Claim for partial refund of December 2013 rent

I find that the tenant vacated the rental unit prior to December 31, 2013 to cooperate with the landlord's efforts to find a new tenant for January 1, 2014, and in doing so to

avoid the possibility of the landlord claiming a rental loss for January 2014 based on the tenant's breach of the fixed term.

I do not accept the tenant's evidence that she could have found another client to occupy the rental unit for the month of January 2014 to complete the fixed term, since this possibility does not appear to have been raised in the email exchange between the parties.

Since I find the tenant vacated the rental unit before December 31, 2013 for the purpose of cooperating with the landlord's efforts to find new tenants and so to avoid liability for a January 2014 rental income loss, the tenant is not eligible for the return of an amount equivalent to four days rent. The tenant's claim for a partial refund of December 2013 rent is dismissed.

Claim for return of security deposit

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on December 28, 2013 (as set out in the email exchange between the parties dated December 7, 2013). The landlord was therefore obligated to either repay any security deposit or make an application for dispute resolution by January 12, 2014. Since January 12, 2014 was a Sunday, the time is extended to January 13, 2014. Based on the tenant's evidence that she received the landlord's cheque on about January 13, 2014, I find that the landlord returned part of the security deposit within 15 days. However, I find that Section 38(1)(c) obligates the landlord to return the entire security deposit, less any amounts agreed to by the tenant. In this case, the tenant did not agree in writing to any deductions. Accordingly, I find the landlord did not follow the provisions of Section 38(1) regarding the security deposit.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, that amount is \$2,100.00. The landlord has already repaid the sum of \$711.06 and the balance owing is therefore \$1,388.94.

Where a landlord believes he or she has a claim against a tenant, for example for loss of rental income stemming from a breach of a fixed term agreement, the landlord must file an application for dispute resolution with the RTB. An arbitrator is not empowered to deal with a landlord's monetary claim within a hearing of the tenant's claim, unless the landlord has filed a cross-application.

Since the tenant has been successful in the larger part of her claim, she is also entitled to recover her RTB filing fee of \$50.00 from the landlord.

I grant the tenant an order under Section 67 for \$1,438.94. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$1,438.94.

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: May 12, 2014

Residential Tenancy Branch

