



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid and/or loss of rent; and authorization to retain the security deposit. 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.

Preliminary Issue – Identity of tenant

I noted that the person named as the tenant on this Application for Dispute Resolution did not sign the written tenancy agreement submitted as evidence and that the written tenancy agreement was signed by a third party who was present at the hearing. Upon further enquiry, all parties agreed that the person named as the tenant in this application was the tenant and that the tenant's mother signed the tenancy agreement as a "guarantor". I further heard that the written tenancy agreement was not presented to the tenant for review or signature when the tenancy formed. As the named tenant was not privy to the written tenancy agreement when the tenancy formed, in establishing the terms of tenancy, I did not rely upon the written tenancy agreement. Rather, I found the landlord and the tenant had a verbal tenancy agreement.

Issue(s) to be Decided

1. Has the landlord entitled to recover unpaid and/or loss of rent from the tenant in the amount claimed?
2. Is the tenant authorized to retain the tenant's security deposit?

Background and Evidence

The tenant was required to pay rent of \$440.00 on the 1st day of every month. The tenant gave the landlord written notice to end the tenancy on March 19, 2014. The written notice indicates the tenant would be vacating the rental unit between April 2 and 4, 2014. The reason for ending the tenancy, as indicated on the written notice of March 19, 2014, is that the tenant wanted to live "closer to downtown for summer work". The tenant actually vacated the rental unit on April 1, 2014 but did not pay rent for April 2014.

The landlord is seeking to recover unpaid and/or loss of rent for the months of April and May 2014 in the amount of \$880.00. In support of this position, the landlord submitted a written tenancy agreement signed by the tenant's mother, but not the tenant, indicating the tenancy was for a fixed term ending August 31, 2014. For reasons given under the section "Preliminary Issue" I have not considered the written tenancy agreement as evidence as to the terms agreed upon by the landlord and the tenant. The only other evidence the landlord provided was a copy of the tenant's notice to end tenancy dated March 19, 2014.

The landlord submitted that advertising efforts commenced March 31, 2014 and the unit remains vacant as of the date of this hearing. The landlord explained that she waited to start advertising until March 31, 2014 because the landlord was uncertain as to when the tenant would be vacating in April 2014 and attempts to communicate with the tenant by going to her rental unit were unsuccessful. The landlord indicated that the rental unit has not re-rented yet because of the "break" for the students.

The tenant was of the position the landlord had verbally informed her that all she needed to give for notice to end the tenancy was two or three weeks of notice which is why she gave notice on March 19, 2014.

The tenant denied that the landlord attempted to communicate with her about the effective date of the notice to end tenancy by coming to her rental unit as the landlord stated.

The tenant also submitted that the landlord only rents to university students. The landlord denied this.

The tenant submitted that the landlord was agreeable to permitting the tenant to occupy the rental unit until April 1, 2014 so as to clean the rental unit, including the mouse droppings. The landlord denied waiving any entitlement to collect rent for the month of April 2014 from the tenant.

The tenant also submitted that the tenant vacated the rental unit because of a mouse infestation and "emotional trauma" inflicted upon her by the landlord. The tenant acknowledged that she did not put the landlord on written notice as to repair issues or breaches of her right to quiet enjoyment. Nor, had the tenant filed an Application for Dispute Resolution seeking further remedy or compensation for such breaches, as alleged.

The tenant was also of the position that since she was denied possession of the rental unit for two weeks at the start of the tenancy, despite paying rent for those two weeks, and this should be taken into account in determining whether the tenant gave sufficient notice to end tenancy and the landlord's monetary claims against her. The landlord denied that the tenant was not permitted occupation of the rental unit for two weeks at the beginning of the tenancy. I did not explore this submission further as such circumstances would form part of a monetary claim

against the landlord, not as a basis for giving insufficient notice to end tenancy, and the tenant has not filed a monetary claim against the landlord.

Although the tenant raised issues that may entitle her to compensation from the landlord, I could not consider such claims during this hearing as the tenant had not filed an Application for Dispute Resolution seeking compensation from the landlord. The tenant was informed of her right to pursue such claims by filing her own Application for Dispute Resolution against the landlord if she so chooses.

Analysis

For reasons provided under the “Preliminary Issue” section in this decision, I have found that the tenant is not bound by the terms reflected in the written tenancy agreement that was submitted into evidence by the landlord and the landlord and the tenant had a verbal tenancy agreement.

Terms of tenancy entered into verbally are enforceable so long as the parties are in agreement as to what the terms were. In this case, I was provided conflicting verbal testimony as to the tenant’s obligation to give notice to end tenancy. Since the landlord received written notice to end tenancy in March 2014 that was effective in April 2014, in order to grant the landlord’s request for loss of rent for April and May 2014 I would have to be satisfied the parties had a fixed term tenancy. The landlord has the burden to prove the parties had a fixed term tenancy agreement. I find the disputed verbal testimony insufficient to establish the landlord and tenant had a fixed term tenancy.

If parties do not have a fixed term tenancy, the tenant is at liberty to end the tenancy by giving notice as provided under section 45(1) of the Act. Under section 45(1) of the Act, a tenant may end a tenancy by giving the landlord one full month of written notice and the effective date must be no earlier than the day before rent is due. Since rent was due on the 1st day of every month, in giving the landlord notice on March 19, 2014 the earliest date the tenant could have legally ended the tenancy was April 30, 2014. Also of consideration in this case is that the tenant was still in possession of the rental unit in April 2014. Therefore, I find the tenant obligated to pay rent for the month of April 2014 and I grant the landlord’s request to recover unpaid rent of \$440.00 for the month of April 2014.

I have denied the landlord’s request for recovery of rent for May 2014 as I have rejected the landlord’s position that the parties had a fixed term tenancy for reasons already given in this decision.

Although the tenant raised issues with respect to mice and loss of quiet enjoyment, I note the tenant did not put the landlord on written notice as to these issues or seek further remedy by filing an Application for Dispute Resolution. Rather, her notice to end tenancy clearly indicates her reasons for ending the tenancy are to move closer to work. Therefore, I reject those reasons as a basis for giving insufficient notice to end a month to month tenancy.

As the landlord was partially successful in this application I award the landlord one-half of the \$50.00 filing fee paid for this application, or \$25.00.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In light of all of the above, the landlord is provided a Monetary Order for the net amount of \$245.00 [calculated as \$440.00 for April 2014 rent + \$25.00 for filing fee - \$220.00 security deposit].

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$245.00 to serve and enforce if 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: June 26, 2014

Residential Tenancy Branch

