



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application to retain the security deposit in satisfaction of loss of rent. 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 and Procedural Matters

The landlord had named two tenants in filing this Application and at the outset of the hearing the female tenant that appeared confirmed that she was representing the other named tenant, her husband. However, I have amended this application to exclude the other tenant as I have found he had not entered into a tenancy agreement with the landlord, for reasons given in the analysis section of this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover loss of rent from the tenant?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord's agent and the tenant met at the residential property on February 21, 2014 and on that date the tenant gave the agent a security deposit of \$650.00; the landlord's agent gave the tenant the keys to the rental unit and a written tenancy agreement. The tenancy agreement indicated the tenancy was set to commence March 1, 2014 for the monthly rent of \$1,300.00 for a fixed term of one year. The tenancy agreement was signed by the landlord and the landlord's agent. As the tenant's husband was out of town at the time the tenant took the agreement home so as to

obtain his signature. The tenant did not return a signed tenancy agreement to the landlord.

In the days that followed a series of emails were exchanged between the tenant and the landlord's agent. Below, I have summarized the key elements of those emails:

Date of email	Email written by	Content of emails (summarized)
February 22, 2014	Landlord	Cleaning of the unit is set for February 24, 2014 so as to be done by the anticipated move in date of February 26, 2014
February 23, 2014	Tenant	The tenant's husband was in the property February 22, 2014 and did some cleaning but that more cleaning was required.
February 24, 2014	Landlord	The landlord had been at the property to clean but there was a man sleeping in a hammock in the kitchen/hallway so the landlord requested clearance to go in on February 25, 2014.
February 24, 2014	Tenant	The tenant and her husband are having marital problems and her husband does not want to move in. The tenant informs the landlord that she cannot afford the property by herself.
February 25, 2014	Landlord	The landlord is glad "things worked out" [the landlord explained the tenant had called and informed the landlord they had resolved their differences and would be paying rent on February 26, 2014]
February 26, 2014	Tenant	The tenant and her husband will not be renting the property as her husband does not want a year's lease. The tenant indicated her husband had left with his brother leaving her to find a place of her own. The tenant indicated she was leaving the keys at the property.

The landlord found the keys at the property on February 27, 2014 and started advertising for a replacement tenant. The landlord submitted that a new tenancy commenced as of March 15, 2014 although the incoming tenants were permitted to park

a boat and vehicle on the property before that date, without charge, as they would be out of town. The landlord stated the new tenants did not move into the house until March 18, 2014 but he collected ½ of the monthly rent for the second half of March 2014. The landlord seeks to hold the tenants responsible for the loss of rent incurred for the first half of March 2014.

The tenant acknowledged that she had changed her mind a couple of times with respect to renting the house but was of the position she is not responsible for compensating the landlord for loss of rent for March 2014 for the following reasons:

- The tenants did not sign the tenancy agreement;
- The house was not clean when they were provided possession;
- The house was in need of repairs;
- The tenant's husband did not agree to a one-year lease after she took the tenancy agreement from the landlord and reviewed it with her husband;
- The tenant has a legal right to cancel a tenancy agreement if done so within 5 to 7 days; and,
- New tenants were provided possession of the property in early March 2014.

The landlord stated he had a written tenancy agreement with the new tenants showing that tenancy commenced March 15, 2014 he could provide it as evidence if requested.

Analysis

Under section 16 of the Act, "the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." In other words, if a tenancy formed the tenants were obligated to pay rent that was due March 1, 2014 until such time the tenancy ended. The tenant was of the position a tenancy did not form and I proceed to consider whether a tenancy formed based upon everything presented to me.

Under section 1 of the Act, a tenancy agreement is defined to include an agreement that is entered into orally or in writing. In the absence of the tenants' signatures on the written tenancy agreement, I find a written tenancy agreement was not entered into; therefore, I proceed to consider whether an oral tenancy agreement formed.

As I was not provided any evidence to suggest the male tenant named in this dispute had any communication with the landlord with respect to a tenancy agreement I find there is insufficient evidence to establish an oral tenancy agreement formed between

the male tenant and the landlord. For this reasons, I have excluded the male respondent as a party to this dispute and amended the Application for Dispute Resolution accordingly.

In contrast, it is undisputed the female tenant had several communications with the landlord concerning a tenancy for this property and I proceed to consider when she entered into an oral agreement with the landlord.

I find the most compelling evidence to indicate a tenancy formed was the payment and acceptance of the security deposit. Sections 17 of the Act provides that a landlord may require a tenant to pay a security deposit “as a condition of entering into a tenancy agreement or as a term of a tenancy agreement” and section 20 of the Act provides that a landlord may not require security deposit “at any time other than when the landlord and tenant enter into the tenancy agreement”. Further, the giving of consideration such as a deposit is one of the elements of forming a contract under contract law.

In addition to paying a security deposit, I find that the tenant’s acceptance of the keys to the rental unit; entering the unit and commencing cleaning activities are further indications that the tenant had entered into a tenancy agreement.

In light of the above considerations, I find that a tenancy formed on February 21, 2014 when the tenant paid and the landlord accepted the security deposit and the tenant took possession of the rental unit. Since a tenancy formed on February 21, 2014 the tenants obligations under that agreement took effect at that time. Accordingly, in order to end the tenancy the tenant would was bound to end the tenancy in a manner that complies with the Act.

Since the tenant did not sign the written tenancy agreement I find insufficient evidence that a fixed term tenancy was entered into. In the absence of a fixed term tenancy, the tenant was required to give the landlord one full month of notice to end the tenancy. This she did not do and I find her insufficient notice is a breach of the Act.

I am satisfied that given the tenant’s email notification of February 26, 2014 the landlord likely suffered a loss of rent for the first half of March 2014 as submitted by the landlord. Therefore, I hold the tenant responsible for compensating the landlord for this loss.

I reject the tenant’s arguments that she had a legal right to cancel the tenancy within 5 to 7 days of entering into the oral agreement as there is no such provision under the Act.

I am satisfied by the email exchanges that the landlord had made arrangements for cleaning at the property and I was not provided any evidence that the tenant had otherwise communicated to the landlord that there were repair issues that would preclude her from renting the property. Therefore, I reject the tenant's position that cleaning and repair issues entitled her to give the landlord less than one month of notice to end the tenancy.

In light of all of the above, I grant the landlord's request to retain the security deposit in satisfaction of the loss of rent the landlord incurred due to the tenant's breach of the Act.

As the landlord withdrew his request for a Monetary Order for recovery of the filing fee I do not provide one with this decision.

Conclusion

The landlord was successful in this application and has been authorized to retain the security deposit in satisfaction of loss of rent.

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 27, 2014

Residential Tenancy Branch

