



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to dispute an additional rent increase, for the Landlord to return the Tenant’s pet damage and security deposits, and to recover the filing fee from the Landlord for the cost of the Application.

An agent for the Landlord, two property managers and the Tenant appeared for the hearing and provided affirmed testimony. One of the property managers confirmed receipt of the Tenant’s Application which was served by the Tenant via registered mail.

Preliminary Issues

The Landlord confirmed receipt of the Tenant’s evidence but the Tenant denied receipt of the Landlord’s written evidence. The property manager for the Landlord claimed that this had been served to the Tenant by registered mail but was unable to retrieve evidence of this during the hearing and a copy of it was not provided prior to the hearing. As the Landlord had failed to prove service of the written evidence to the Tenant in accordance with the Rules of Procedure, I declined to consider the Landlord’s written evidence in the hearing and in my decision.

The Tenant confirmed that she had received her pet damage and security deposit back from the Landlord at the end of the tenancy and therefore this issue did not need to be dealt with during the hearing. As a result, I dismissed the Tenant’s Application for the return of these deposits.

Although the Tenant had not elected on the Application to claim for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), the details section of the Application disclosed a monetary claim for losses. The Tenant was asked to provide a breakdown of her claim and stated that she was claiming for costs

relating to an illegal rent increase paid during the duration of the tenancy in the amount of \$1,050.00. The Tenant also claims for the return of \$400.00 that she paid to the Landlord for breaking a fixed term tenancy. This was also explained in the details section of the Application. Based on this, I amended the Tenant's Application to include this monetary claim amount for loss claimed under the Act. This was amended under the authority afforded to me by Section 64(3) (c) of the Act.

Issue(s) to be Decided

The hearing process was explained and the participants were asked if they had any questions. I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

- Is the Tenant entitled to monetary compensation for an alleged rent?
- Is the Tenant entitled to the return of \$400.00 which was paid to the Landlord to end the fixed term tenancy?

Background and Evidence

The parties agreed that this tenancy started on November 1, 2011 for a fixed term which was due to end on October 31, 2012; after this time period the tenancy was to end and the Tenant was required to vacate the rental suite.

The Tenant explained that an advertisement for the rental suite established the rent in the amount of \$750.00. However, when the Landlord and Tenant were in the process of completing the tenancy agreement on October 14, 2011, the Tenant explained to the Landlord that she had a cat. The Landlord then stipulated that the rent would be \$785.00 with a pet damage deposit. The amount recorded before the conversation about the cat was \$750.00 and this was then changed to \$785.00 as a result of the cat conversation. The Tenant initialed the change in the amount of rent payable on the tenancy agreement and at that point the tenancy agreement was signed by both parties.

The Tenant testified that after the fixed term had ended, the Landlord offered her to sign a new tenancy agreement but required the Tenant's mother to sign the agreement to act as a guarantor which the Tenant was not happy about.

The Tenant testified that no written tenancy agreement was entered into or presented to the Tenant for signature after the fixed term tenancy ended. However, the Tenant

agreed to continue renting the suite and would accept a parking space for an extra \$25.00 per month, for a total rent of \$810.00.

The Tenant testified that she continued to pay this amount in rent for another year until the Landlord offered her another written agreement to start on December 1, 2013 for a fixed term of one year for the same monthly rent amount of \$810.00, inclusive of the parking space. The Tenant alleges that the Landlord forced her to sign the tenancy agreement due to a dispute she was having with another resident and the Landlord had no authority under the Act to make her sign the fixed term agreement as she claims that was in a periodic tenancy.

As a result, the Tenant claims that she should not have had to pay the \$400.00 liquidated damages charged under the tenancy agreement by the Landlord to end the tenancy as she was forced to leave at the end of May, 2014 due to her dispute with the neighbors.

In addition, the Tenant claims the extra \$35.00 for each month of the tenancy which she now submits was an illegal rent increase. The tenant testified that the Landlord had advertised the rental suite for \$750.00 and this amount should not have changed for a reason that she had a cat as this was accounted for through the payment of a pet damage deposit.

The property managers submitted that the Tenant was made aware before she signed the first tenancy agreement that the rent amount would be higher if she had pets and that the agreement was signed by the Tenant with her fully knowing the differences in the amount payable.

The property managers disputed the Tenant's testimony and testified that the Tenant did sign another fixed term tenancy agreement after the first one had expired and that this was provided in their written evidence; however as they failed to prove that this had been served to the Tenant in accordance with the Rules of Procedure, this written evidence could not be referred to in the hearing.

The property managers testified that they had received complaints about the Tenant from other residents about the Tenant's smoking of marijuana and that they had tried to address these issues with the Tenant through warning letters in an attempt to maintain the tenancy in good standing. The Tenant disputed this testimony stating that the allegations were unfounded.

The property managers referred me to the latest tenancy agreement, which was the same format as the previous agreement, and pointed me to clause five which provides for a liquidated damages clause in the tenancy agreement.

When all of the evidence had been provided by the parties and the hearing was being ended, the Tenant exited the conference call hearing before it had been officially concluded. However, no further submissions were made by the other party after the Tenant left the call.

Analysis

In relation to the Tenant's claim for the return of an alleged increase, I find that the amount the Tenant seeks to recover from the Landlord for each month does not fall under a rent increase.

Based on the Tenant's testimony, I find that up until the first tenancy agreement was signed by both parties, the amount of rent payable under the tenancy agreement was still being established and negotiated. Despite what the rent amount for a unit is advertised at, the rent amount may still be changed between the parties before it is agreed upon; this may be lowered or increased through negotiation of the amount based on parties' circumstances.

The rights and obligations of a Landlord and Tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into. Therefore, I find that by the time the Landlord and Tenant had signed the first tenancy agreement, the amount of rent payable and agreed to by both parties, as evidenced by their signatures and initials, was \$785.00. I find that the Tenant's argument that it should have been \$750.00 as originally proposed by the Landlord's advertisement of the unit and that a pet damage deposit was taken, is not valid as the amount of rent was still being negotiated and decided upon and a final amount of \$785.00 was legally ratified through the signing of the agreement by both parties. On this basis, I dismiss the Tenant's Application for monetary compensation in relation to her rent increase claim.

Fixed term tenancies are designed to strictly prohibit a Tenant or Landlord from ending the tenancy. However, the Act provides certain grounds under which such a tenancy may be ended. Section 45(3) of the Act states that a Tenant may end a fixed term tenancy if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the Tenant gives written notice of the failure.

The Tenant claims that she was forced to sign the latest tenancy agreement and argues that she did not know her rights and obligations when it came to entering into a fixed term tenancy when a Tenant is in a periodic tenancy.

The property managers denied that at no point during the tenancy was the Tenant in a month to month tenancy. However, the fact of the matter is that when the Tenant vacated the rental suite on May 30, 2014 she was in a fixed term tenancy which she had signed and provided in written evidence. I find that a lack of knowledge regarding the rights and obligations of a party under the Act is not sufficient for me to deem that the Tenant was forced into signing a fixed term tenancy. A party is responsible for knowing their rights and obligations under the Act **before** they enter into a tenancy.

The Tenant states that she had to leave the tenancy because of problems associated with a neighbor during the last eight months of the tenancy. The property managers' testimony disputes this and point to the Tenant as being the problem in this case.

It appears as though the Tenant is relying on the provisions of Section 45(3) of the Act in order to relieve herself from the liquidated damages charges as required by the tenancy agreement. However, I find that the Tenant failed to provide sufficient evidence that the Landlord had breached a material term of the tenancy agreement and that the Tenant had given the Landlord an opportunity to correct this or pursued remedies under the Act to deal with the alleged problems of her neighbor.

Based on the foregoing, I find that the Tenant did not have authority under the Act to break the fixed term tenancy that she had entered into which started on December 1, 2013 and was due to end on November 30, 2014.

Policy Guideline 4 defines liquidated damages as "A clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into."

The Tenant signed the tenancy agreement which started on December 1, 2013 and contained a liquidated damages clause for breaking the tenancy. As a result, I find that the Tenant was obligated to pay this amount as required by the tenancy agreement and there is no basis for me to order that the Landlord return this amount back to the Tenant; this portion of the Tenant's Application is therefore dismissed.

As the Tenant has failed to prove her Application, I also dismiss The Tenant's Application to recover the filing fee for the cost of the Application.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application in its entirety **without** leave to re-apply.

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: September 24, 2014

Residential Tenancy Branch

