



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION and ORDERS

Dispute Codes MNDC, OLC

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a Monetary Order and for an Order that the Landlord comply with the Act and Regulations.

The Tenant attended the teleconference hearing. The landlord did not attend. During the hearing the Tenant was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Landlord did not attend the hearing, service of the Tenant's Application for Dispute Resolution and Notice of a Dispute Resolution Hearing (the "Application Materials") was considered. The Tenant testified that the Application Materials were served on the Landlord by registered mail on July 11, 2014. The Tenant further testified that he also spoke with the Landlord's brother, R.A., who confirmed that his brother, the Landlord, had received the application material and, according to the Tenant, R.A. had a copy of the documents in his possession when the Tenant spoke with him. I accept the Tenant's undisputed testimony that he served the Landlord by registered mail and that he is deemed served five days later, namely July 16, 2014 under the *Act* as a result.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order under the *Act*, and if so, in what amount?
- Is the Tenant entitled to an Order, pursuant to section 62(3) that the Landlord comply with the Act or Regulations?

Background and Evidence

The Tenant testified that the Landlord refused to prepare a written tenancy agreement, issue receipts for cash payments, and sign a Shelter Form as required by the Ministry of Social Development and Social Innovation.

As no written tenancy agreement existed, the Tenant gave testimony regarding the terms of the tenancy. The Tenant also submitted into evidence a Statement of Facts which was included in the Application Materials and which set out the terms of the tenancy.

According to the Tenant's testimony and evidence, a month to month tenancy agreement between the parties began on August 1, 2013. Monthly rent in the amount \$625.00 per month was payable on the 3rd of each month. Included in the rent were expenses relating to heat and water, cable, wifi internet, use of the space under the stair going up to the suite, exclusive use of the sideways (passway to the suite) and 1 parking space in front of the house. The tenant paid a \$312.50 security deposit at the start of the tenancy which the Landlord continues to hold. (Notably, the Tenant confirmed that he erroneously noted the security deposit payment as \$310.00 in his statement of facts and clarified that the amount was \$312.50, one half of the monthly rent.)

The Tenant is a recipient of income assistance. He testified that he must provide a copy of the written tenancy agreement or signed shelter information form in order to qualify for income assistance. In support of this, he introduced into evidence a letter from the Ministry of Social Development and Social Innovation wherein those documents are requested. That letter was also included in the Application Materials which were served on the Landlord. The letter further states that the Tenant's employment and assistance cheque was being withheld until that information was provided. The Tenant testified that he had, subsequent to receipt of the letter, received his cheque but had been warned that further cheques may also be withheld.

The Tenant introduced into evidence a document which contained a transcription of text messages between the Landlord and the Tenant between July 4, 2014 and July 10, 2014 wherein the Tenant requests that the Landlord provide a written residential tenancy agreement (which the Tenant refers to as a "lease document" and "lease agreement") or sign the "Shelter Information Form". The transcription was also included in the Application Materials which were served on the Landlord. In the text messages the Landlord communicates his concerns with having the government involved, confirms that he will not provide a written residential tenancy agreement nor will he sign the

Shelter Information Form. The Landlord then attempts to evict the Tenants claiming that he never intended to rent the suite, and communicates his concerns with having tenants who are on “welfare”.

The Tenant applied for Dispute Resolution on July 7, 2014. In his application he sought a Monetary Order for \$2,500.00. The form requires applicants to provide a detailed calculation of the amount in the “Details of the Dispute” box. No such details were provided. The Tenant testified that he sought funds for missed work, frustration, possible future losses of income assistance, and the cost of the registered mailing.

The Tenant’s application also included a request for an Order that the Landlord comply with the Act and provide a lease contract, issue receipts for cash payments since August 2013 and sign the Shelter Information Form.

The Tenant testified that he paid the rent in cash for the months August through November 2013, and January through June 2014. He confirmed that he paid by cheque for December 2013 as well as July through September 2014.

Analysis

Monetary Order

Expenses relating to registered mail are not recoverable under the Act. The balance of the Tenant’s monetary claim, for future loss, frustration, and missed work lacked sufficient details and evidence. Accordingly, I dismiss the Tenant’s monetary claim.

The Tenant submitted that he may be denied income assistance should the Landlord continue to refuse to provide him with a written tenancy agreement. Should the Tenant suffer such a loss, he is at liberty to reapply for a related Monetary Order.

Order for the landlord to Comply with the Act

The Tenant sought an Order, pursuant to section 62(3) that the Landlord comply with the Act and Regulations.

Section 62(3) of the Act provides as follows:

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or

tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Pursuant to Section 13(1), the Landlord must prepare written tenancy agreements.

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

I accept the Tenant's undisputed evidence with respect to the terms of the tenancy. Accordingly, **I order that the Landlord**, within 21 days of the date of this decision, prepare a written tenancy agreement and provide a copy of the agreement to the Tenant. In addition to the above standard terms the tenancy agreement shall include the following:

1. The rental unit is as noted on the Application for Dispute Resolution.
2. The tenancy is a month to month tenancy.
3. The tenancy began August 1, 2013.
4. The Tenant paid a security deposit of \$312.50.
5. Rent shall be payable in the amount of \$625.00 per month payable on the 3rd of each month.
6. In addition to the rental unit, the Tenant shall have access to the space under the stair going up the suite and exclusive use of the sideways (passway to the suite).
7. The following expenses are included in the rent:
 - a. heat and water,
 - b. cable television, and
 - c. wifi internet.

Pursuant to section 26(2) the Landlord must provide the Tenant with a receipt for rent paid in cash. I accept the Tenant's undisputed testimony that he paid rent in cash for the months August, September, October and November 2013, as well as January, February, March, April, May and June 2014. Accordingly, **I order that the Landlord** provide the Tenant with a receipt for rent paid in cash for those months.

There is no authority under the Act for an Order that the Landlord sign the Shelter Form. Accordingly, I dismiss that request.

Conclusion

The Tenant's application for an Order that the Landlord prepare and provide a copy of a written tenancy agreement is granted. The Tenant's application for an Order that the Landlord issue cash receipts is granted. The Tenant's application for a Monetary Order is dismissed with leave to reapply should the Landlord not comply with this Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2014

Amended: September 19, 2014

Residential Tenancy Branch

