



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, MNDC, OLC, FF, O

For the landlords – MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The hearing was adjourned as the Arbitrator had not been given notice of the landlords' application which had been scheduled at the same time as the tenant's application. The tenant's application was heard and the hearing was reconvened on today's date to hear the landlords' application. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover all or part of the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlords to comply with the *Act*?
- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2011 for an initially term of one year. The tenancy then reverted to a month to month tenancy and this was ended by the tenant on June 15, 2014. Rent for this unit was \$1,600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$800.00 on December 14, 2011. Both parties attended the inspections at the start and end of the tenancy and the tenant provided a forwarding address in writing to the landlords on June 15, 2014.

The tenant testified that the landlords asked the tenant to sign a Mutual Agreement to End Tenancy document which was signed by the parties on May 26, 2014 and had an effective date of August 01, 2014. The tenant testified that the landlords wanted to sell the house and therefore should have given the tenant a Two Month Notice to End Tenancy instead of getting the tenant to sign a mutual agreement to end the tenancy. The tenant testified that she was not aware the implications of the document she signed. The tenant testified that as she was entitled to a Two Month Notice to End Tenancy the tenant seeks compensation from the landlords equal to one month's rent of \$1,600.00.

The tenant testified that she gave the landlords notice on June 05, 2014 and moved out on June 15, 2014. The tenant testified that she had paid rent and utilities for the entire month of June and therefore seeks to recover \$800.00 in rent from June 15, 2014 and utilities from June 15, 2014. The tenant testified that she had to pay the utilities for all three units in the home the tenant has provided a utility bill for \$90.64 and testified that her share was \$36.26 and she did receive \$27.19 from the tenants in unit B; however, the landlords are required to pay \$27.19 for unit C. The tenant testified that the other utility bill was \$68.42 and has provided a copy of this utility bill in evidence. The tenants share was \$27.37, Unit B paid \$20.52 and the landlords owe the tenant \$20.53 for unit C.

The tenant testified that the landlords have not returned the tenant's security deposit and the tenant seeks a Monetary Order to recover the security deposit of \$800.00. The tenant also requested an Order for the landlords to comply with the *Act* with regard to ending the tenancy.

The landlord MC testified that the tenant signed the Mutual Agreement to End Tenancy and therefore the tenancy should not have ended until August 01, 2014. The tenant ended the tenancy without proper notice and the landlords therefore disputed the tenant's claim to recover half a month's rent for June or compensation of \$1,600.00 for a Two Month Notice that was never issued to the tenant.

The landlords do not dispute that they owe the tenant utilities for unit C of \$27.19 and \$20.53.

The landlords seek to recover unpaid rent for July as the tenant vacated the rental unit without proper notice and in contrary to the Mutual Agreement that the parties signed. Due to this the landlords seek an Order permitting them to keep the security deposit of \$800.00 and seek a Monetary Order for the balance.

The tenant disputed the landlords' claim for a loss of revenue for July. The tenant testified that the landlords agreed the tenant could move out on June 15, 2014 and promised to return the security deposit and half the rent for June. The landlords inspected the house and found nothing wrong in the house, so should not be allowed to keep the security deposit. The tenant testified that if the landlords had not verbally agreed to return the rent from June 15 to June 30 the tenant would have remained in possession of the unit and not returned the keys until the end of June.

MC testified that they did not agree the tenant could move out on June 15, 2014. MC testified that they had all signed the Mutual Agreement to End Tenancy for August 01, 2014 and were entitled to the rent for the remainder of June and July. MC testified that the reason they did not return the security deposit was because they were filing an application to keep it to recover some of July's rent. MC testified that they did not advertise the unit for rent throughout July as they were going to sell the house and the house was put on the market on June 17, 2014 after the tenant vacated. This was the reason for the Mutual Agreement to End Tenancy for August 01, 2014 as the landlords had intended to sell the house then as they were entitled to do.

The tenant asks the landlords if they didn't expect the Notice why did the landlords get back the keys on June 15. MC responded that the tenant gave the landlords the notice to end tenancy in front of an officer at the Residential Tenancy Office even after that officer had explained to the tenant that she could not end the tenancy until August 01, 2014.

The tenant asked the landlords if they agreed to pay back half the rent for June and asked the tenant for her forwarding address to send the money and the inspection report; however, instead the landlords served the tenant with their application for dispute resolution. MC responded that when they have the tenant's forwarding address they have 15 days to either return the security deposit or file an application to keep it.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the tenant's application to recover half a month's rent for June of \$800.00; If the parties have signed a Mutual Agreement to End Tenancy then this agreement is binding and enforceable. The agreement states that the parties agree the tenancy will end on August 01, 2014. I therefore find the tenant is not entitled to end the tenancy prior to this date and is not entitled to recover rent paid from June 15 to June 30, 2014 of \$800.00. This section of the tenant's claim is dismissed without leave to reapply.

With regard to the tenant's application for compensation of one month's rent; I refer the parties to s. 51 (1) of the *Act* which states:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

The tenant did not receive a Notice to End Tenancy under s. 49 of the *Act* for landlords' use of the property. Instead the tenant signed a Mutual Agreement to End Tenancy. If a tenant signs any document such as this the tenant should ensure they fully understand the implications of signing a document which is legal and enforceable and should have taken advice before signing the document if the tenant did not understand what she was signing. Consequently, I find the tenant is not entitled to compensation of \$1,600.00 for a Notice the tenant did not receive. This section of the tenant's claim is dismissed without leave to reapply.

With regard to the tenant's claim for unpaid utilities; a landlord is required to have the utilities in their own name when there is more than one tenant living in accommodation that shares utilities. In this accommodation the utilities were in the name of this tenant and this tenant has paid her share of the utilities and the share for unit C. I therefore find

the landlords are responsible for utilities for unit C and the landlords have not disputed this at the hearing. The tenant has therefore established a claim to recover the amount of **\$47.72** from the landlords.

As this tenancy has now ended I am not prepared to address the tenant's claim for an Order for the landlords to comply with the *Act* as if successful the tenant would not be able to enforce any such Orders if the tenancy no longer exists.

With regard to the landlords' claim to recover a loss of revenue for July; as mentioned above when the parties sign a mutual agreement to end tenancy then the purpose of signing this agreement is to agree a date that the tenancy will end which is mutually satisfactory to both parties. The parties are then bound by this agreement and may not end the tenancy before or after this agreed upon date. I find the tenant did end the tenancy on June 15, 2014 and paid rent for June but not July, 2014. The landlords are normally required to attempt to re-rent the unit in a timely manner to mitigate any loss if a tenant vacates the unit sooner than legally allowed; however, in this case the mutual agreement was signed to ensure the landlords would get rent for that time period and there was not enough time left for the landlords to reasonably mitigate loss. I therefore find the landlords have established a claim to recover a loss of rent for July of **\$1,600.00**.

Having considered both claims I find the landlords' claim to keep the security deposit is upheld. The landlords have established that the tenant owes rent for July and therefore I have offset the security deposit of **\$800.00** against the landlords' claim to recover rent for July pursuant to s. 38(4)(b) of the *Act*. The tenant's claim to recover the security deposit is therefore dismissed without leave to reapply.

As the landlords' claim has more merit than that of the tenants I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. The tenant's application to recover the filing fee is dismissed without leave to reapply. I

have offset the utility bills of \$47.72 from the landlords' claim. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for July	\$1,600.00
Less utilities owed to the tenant	(-\$47.72)
Less security deposit held by the landlords	(-\$800.00)
Filing fee	\$50.00
Total amount due to the landlords	\$802.28

Conclusion

I HEREBY FIND in partial favor of tenant's monetary claim. The amount of \$47.72 has been offset against the landlords' monetary award.

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$802.28** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant. If the tenant fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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: October 06, 2014

Residential Tenancy Branch

