



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord

The tenant testified the landlord was served evidence to the landlord and to the Residential Tenancy Branch. The tenant described the evidence and the landlord did not dispute receiving the evidence as described. However, there was no evidence in the hearing file. As such, I ordered the tenant to submit his evidence no later than the end of the business on January 16, 2014.

The tenant submitted his evidence on January 16, 2014 at 10:05 a.m.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for money owed or compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submits that the parties had entered into a tenancy agreement on June 27, 2014 for a 6 month fixed term tenancy to begin on August 1, 2014 for the monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$550.00 paid. The tenant later testified that he was unsure as to the amount of rent because the landlord had failed to provide him with a copy of the tenancy agreement.

The landlord submits the tenant had submitted a tenancy application for the rental unit for a tenancy to begin on either August 1, 2014 or September 1, 2014 for a monthly rent of \$850.00 due on the 1st of each month with a pet damage deposit and security deposit totalling \$550.00 was paid. The landlord submits that she usually does not require a 6

month fixed term and that they had not yet decided on whether that would be a term of the tenancy. The landlord believed the pet damage deposit was \$200.00 but she was not sure. The landlord states that she had provided the tenant with a copy of a tenancy agreement that he was to sign and return to her but he never returned it.

The parties agree that on or about July 22, 2014 the landlord called the tenant and told him that he could not move in to the rental unit. The tenant submits that the landlord told him that he could not move in because the renovations to the rental unit were so nice that she was going to move in to the rental unit herself.

The landlord submits that the reason the start date of the tenancy had not been fixed for August 1, 2014 was because the rental unit was undergoing major renovations and she could not let the tenant in at the beginning of August 2014 because the renovations weren't complete. She testified that, ultimately, the rental unit was not ready for occupancy until November 1, 2014.

The parties agreed that the landlord offered the tenant the opportunity to move into the rental unit below the subject unit but that he refused because he felt the lower unit smelled musty. The parties agree the deposits were returned. The tenant seeks compensation in the amount of \$5,000.00. The tenant submits this to be an amount that is almost as much of the value of the 6 months of the fixed term tenancy.

Analysis

The be successful in a claim for loss or damages resulting from a violation of the Act, regulation or tenancy agreement the party making the claim has the burden of providing sufficient evidence to establish:

1. That damage or loss exists;
2. That the damage or loss has resulted from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any to mitigate the damage or loss.

Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Based on the testimony of both parties, I find that the parties did enter into a tenancy agreement on June 27, 2014 and that they reached a consensus on the terms of that tenancy and that the landlord accepted the security and pet damage deposits as consideration for the agreement.

As to the start date of the tenancy agreement, in the absence of any documentation from the landlord to the contrary and on a balance of probabilities, I find that it would be

unlikely that a tenant, looking for a home to move into, would enter into a tenancy that did not have a set start date of the tenancy.

As such, I prefer the tenant's testimony and find the tenancy was to begin on August 1, 2014.

Section 16 of the *Act* stipulates that 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. As I have found the tenancy began on August 1, 2014 I find that the rights and obligations under the *Act*, regulation and tenancy agreement began for both parties on August 1, 2014.

Section 44 of the *Act* outlines that a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

In addition, each of the named sections above provide, with the exception of a notice under Section 46, that the effective date of a notice is *at least* one month after the other party receives the notice. As such, in the case before me, I find that the earliest effective date that the landlord could end the tenancy when giving a notice on July 22, 2014 would have been August 31, 2014.

Even with that, if the landlord wanted to end the tenancy she would have to provide a written notice to do so and the reasons would have to be allowable under the *Act*. Based on the testimony of both parties, whether it was because the landlord wanted to move in to the rental unit or because the rental unit was undergoing renovations that required the rental unit to be vacant, the only applicable reason under the *Act* would have been under Section 49.

Section 49 of the *Act* states that a landlord may end a tenancy under this section if, among other reasons, the landlord intends to move into the rental unit or the landlord

intends to make repairs or renovations to the rental unit that require the rental unit be vacant. If a landlord were to issue a notice to end tenancy under Section 49, the earliest effective date would be 2 months after the notice was received. As such, in the case before the earliest effective date would have been September 30, 2014.

In addition, if a landlord issues a notice to end a tenancy under Section 49, Section 51 requires the landlord must provide compensation to the tenant equivalent to one month's rent or \$850.00 in the case before me.

Based on the above, I find that tenant has provided sufficient evidence to establish that the landlord violated the *Act* and tenancy agreement by failing to allow the tenant to occupy the rental unit as of August 1, 2014 and by failing to end the tenancy in accordance with the requirements under Section 49 of the *Act*.

I also find that while the tenant has provided no evidence that he has suffered a financial loss, the landlord did not compensate him in accordance with the requirements under Section 51 for ending the tenancy for either moving in or renovations.

Therefore, I find the tenant is entitled to compensation in the amount of \$850.00 subject only to his obligation to mitigate any damages or loss. As the landlord offered an alternate unit to the tenant and the tenant refused this offer for either a temporary or permanent solution, I find the tenant failed to take any steps towards mitigation.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: January 16, 2015

Residential Tenancy Branch

