



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MNDC, MNSD, FF
Landlord's application: MNR, MNDC, MNSD, FF

Introduction

This was the hearing of applications by the tenant and by the landlord. The hearings were conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award, including the return of her security deposit and if so, in what amount?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is described as a coach house. It is a separate dwelling on the landlord's residential property in Surrey. The landlord resides in a house on the same property. The tenant responded to an internet advertisement. She met the landlord at the rental unit and signed a tenancy agreement on December 28, 2014. The tenancy agreement was for a fixed term of one year with month rent in the amount of \$750.00 payable on the first day of each month. The tenant paid the landlord a security deposit of \$325.00, a pet deposit of \$200.00 and the first month's rent in the amount of \$750.00 at the time that the tenancy agreement was signed.

The tenant commenced to move into the rental unit in early January. On January 2nd the tenant sent e-mail messages to the landlord to inform the landlord that baseboard heaters in the bedroom and bathroom of the rental unit did not work and the oven was not working. There was an exchange of e-mails between the parties over the next several days concerning the problems with the heaters, about the tenant's concern that

the smoke detector was not working and about the tenant's desire for a condition inspection of the rental unit.

On January 4, 2014 the landlord sent an e-mail to the tenant stating in part as follows:

I feel that this situation is not working out and am offering the opportunity to mutually end this tenancy.

I suggest that we agree on terminating the lease effective January 31st. The deposit will be returned to you once the property has been vacated.

The tenant responded by e-mail and said that she was not interested at this time in terminating the tenancy.

The following day, January 5, 2015 the landlord sent an e-mail with attachment to the tenant; the e-mail stated as follows:

Please find attached a two month eviction notice. There is a hard copy that was posted to your door yesterday.

My parents are moving in on March 7, 2015.

The tenant submitted a photograph of the 2 month Notice to End Tenancy for landlord's use of property. She said that she found it attached to the door of the rental unit on January 10, 2015, the same day that she saw the landlord's e-mail advising of the eviction. The Notice to End Tenancy was dated January 4, 2015 and it purported to require the tenant to move out of the rental unit by March 7, 2015.

After the tenant received the Notice to End Tenancy from the landlord she elected to move out of the rental unit. She removed her belongings and left the keys in the rental unit on January 10, 2015. The tenant filed her application for dispute resolution on January 23, 2015. She claimed the return of rent paid for January and the security and pet deposits paid. She served the landlord with the application for dispute resolution and Notice of Hearing by registered mail sent on January 28, 2015.

The landlord submitted an application on February 4, 2015. She claimed a monetary award in the amount of \$1,100.00. The amount claimed was said to be for an additional \$150.00 for January rent and the sum of \$900.00 for February rent. She said the increased rent was sought because the landlord said the tenant's use of the plural word "their" in an e-mail communication indicated that the tenant was living in the rental unit with another person and the tenancy agreement provided for the increased rent if there was more than one occupant in the rental unit.

The landlord said she found the key inside the rental unit on January 13, 2015: "upon entering to inspect for reported repairs."

At the hearing the landlord said that the tenant should be responsible for rent for the month of February because the Notice to End Tenancy that she gave to the tenant was: “null and void” and the tenant should have ignored it. The landlord testified that she has not advertised to re-rent the unit and her parents have not moved into the unit. The landlord did not state any clear intention as to the future plan for the rental unit.

Analysis

The landlord and the tenant signed a fixed term tenancy for a one year term. The landlord was not in a position to end the tenancy for landlord’s use before the end of the fixed term, but within days of the commencement of the tenancy the landlord proposed that the tenancy should end by mutual agreement. The same day that the tenant rejected the proposal, the landlord served the tenant with a two month Notice to End Tenancy by posting a copy to the door of the rental unit. I find that the landlord’s conduct in first proposing a mutual agreement to end the tenancy, followed by a Notice to End Tenancy amounted to a repudiation of the fixed term tenancy agreement that justified the tenant in treating the as being at an end and moving out of the rental unit as she did.

The tenant raised repair issues and deficiencies that were not rectified at the date that the tenant removed her belongings from the rental unit on January 13, 2015 without having fully occupied the rental unit; I note that the landlord’s claim that the tenant occupied the unit along with another person is based on supposition. Because the landlord’s actions to end the tenancy without cause were incompatible with the agreement for a fixed term tenancy, I find that the tenant was entitled to consider the agreement as ended and return possession of the unit to the landlord as she did on January 10, 2015.

I find that the tenant derived no appreciable benefit from the tenancy; she incurred additional unquantified costs by having to relocate within days of the inception of the tenancy. I find that she is entitled to the return of rent paid for January and to the return of her security and pet deposits totalling \$525.00. The total monetary award to the tenant is the sum of \$1,275.00. At the hearing the tenant raised a the matter of a potential claim for an additional payment of double the amount of the rent pursuant to section 51 of the *Residential Tenancy Act* if the rental unit is not used for the purpose stated in the Notice to End Tenancy. Because the Notice itself is invalid, there is no basis for any future claim based on the Notice. This tenancy has ended, but not pursuant to the Notice to End Tenancy and the landlord is now free to use the rental unit in any manner she chooses.

The landlord applied for a monetary award. She requested payment of February rent in the amount of \$900.00 plus an additional \$150.00 for January, premised upon her supposition that the tenant may have had an additional occupant in the rental unit. I find that the landlord's application is without merit and should be dismissed; this is because the landlord has conducted herself in a manner wholly incompatible with the one year fixed term tenancy agreement that she signed. The landlord's claim that the tenant abandoned the rental unit is based on the argument that the tenant should have ignored the Notice to End Tenancy that she gave to the tenant because, as the landlord now concedes, the Notice was invalid. I have already determined that the tenant was entitled to treat the landlord's actions as constituting a repudiation of the tenancy agreement and that she accepted the repudiation by moving out of the rental unit after she received the Notice to End Tenancy. Although the Notice was in violation of the statutory provisions, I find that the landlord should not be permitted to give a notice contrary to the *Residential Tenancy Act* and then rely on that invalidity to support an argument that the tenant should be liable for rent because she did not ignore the invalid notice. The landlord has not submitted any evidence to show that she has taken any steps to mitigate her claimed damages by attempting to re-rent the unit. By her own admission at the hearing the landlord has not advertised the unit for rent and has not decided what she will do with the rental unit. There is no basis for a claim for February rent and I have already determined that the landlord is not entitled to retain rent paid for January or to retain the security and pet deposits.

Conclusion

The landlord's application is dismissed without leave to reapply. I have awarded the tenant the sum of \$1,275.00. She is entitled to recover the \$50.00 filing fee for her application, for a total award of \$1,325.00 and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced 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: February 20, 2015

Residential Tenancy Branch

