



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on August 15, 2014 the Application for Dispute Resolution, the Notice of Hearing, and a copy of an email, dated July 25, 2014, were personally delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted other documents to the Residential Tenancy Branch, which she stated were not served to the Landlord. As those documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

On January 20, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were served to the Tenant by registered mail on January 23, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to a rent refund?

Background and Evidence

The Landlord and the Tenant agree that they have a written tenancy agreement for a fixed term that began on January 01, 2014 and ended on June 30, 2014, after which the tenancy was to continue on a month-to-month basis. The parties agree that the tenancy agreement required the Tenant to pay rent of \$1,900.00 by the first day of each month.

The Tenant stated that on July 07, 2014 the Tenant informed the Landlord, via email, that the Tenant wished to end the tenancy. She stated that the Landlord requested that the Tenant fax confirmation of the intent to end and that confirmation was faxed to the Landlord on July 08, 2014. She stated that she believes the faxed document declared that the Tenant intended to end the tenancy on August 11, 2014, although it is possible it may have declared the end date to be August 15, 2014.

The Agent for the Landlord stated that on July 08, 2014 the Landlord received notice of the Tenant's intent to end the tenancy, via fax. He stated that the faxed document declared that the Tenant intended to end the tenancy on August 11, 2014.

The Landlord and the Tenant agree that the Tenant paid \$1,900.00 in rent for August of 2014.

The Landlord and the Tenant agree that on July 25, 2014 the Agent for the Landlord advised the Tenant, via email, that the Landlord had found a new tenant for August 15, 2014 and that the Landlord would refund the equivalent of rent for seventeen days.

The Agent for the Landlord stated that the party who agreed to move into the rental unit on August 15, 2014 signed a tenancy agreement and provided a cheque for a security deposit. He stated that this party backed out of their rental agreement on, or about, July 26, 2014 prior to the Landlord cashing the cheque tendered for the security deposit. He stated that no money has been collected from this party.

The Agent for the Landlord stated that they had an on-going advertisement for this residential complex and they were able to find another tenant for September 01, 2014.

The Landlord and the Tenant agree that approximately four days after July 25, 2014 the Landlord informed the Tenant that the person who intended to move into the rental unit on August 15, 2014 would no longer be moving into the unit. The parties agree that the Tenant did not receive a refund of any rent from August of 2014.

The Tenant argued that the Landlord should not have informed the Tenant of the rent refund until they were certain it would be provided. She further argued that the promise of a rent refund denied them the opportunity to sublet the rental unit.

Analysis

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. On the basis of the undisputed evidence, I find that this tenancy ended as a result of the Tenant serving notice to end tenancy pursuant to section 45 of the *Act*.

Section 45(1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As the rent for this tenancy was due by the first day of each month, a notice to end tenancy provided by the Tenant must end the tenancy on the last day of the month.

On the basis of the undisputed evidence, I find that the Tenant provided the Landlord with written notice that declared the Tenant wished to end the tenancy on August 11, 2014 or August 15, 2014. This notice does not comply with section 45(1) of the *Act*. As the Tenant's notice to end tenancy was given to the Landlord on July 08, 2014 and the rent for this tenancy was due by the first day of each month, the earliest effective date of this notice was August 31, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the Tenant's notice to end tenancy was August 31, 2014.

Section 26(1) of the *Act* requires tenants to pay rent when it is due. I therefore find that the Tenant was obligated to pay \$1,900.00 in rent to the Landlord on August 01, 2014 even if the Tenant did not intend to occupy the rental unit for the entire month of August.

I am aware of nothing in the *Act* that entitles a tenant to a rent refund if a tenant opts to vacate the rental unit prior to the end date of the tenancy. Although I find it admirable that the Landlord offered to refund a portion of the rent for August because they believed that had secured a new tenant, I cannot conclude that the legislation obligated the Landlord to pay a refund.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord failing to comply with the *Act* or the tenancy agreement. As the Tenant has not established that the Landlord failed to

comply with the *Act* or the tenancy agreement when it did not refund a portion of the rent paid for August, I find that the Tenant is not entitled to a rent refund.

In determining this matter I have placed little weight on the Tenant's argument that the promise of a rent refund denied the Tenant the opportunity to sublet the rental unit, as I find it highly unlikely that the Landlord would have agreed to allow the Tenant to sublet the rental unit for approximately two weeks.

Conclusion

The Tenant's application for a rent refund is dismissed.

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 27, 2015

Residential Tenancy Branch

