



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF
 MNSD FF

Preliminary Issues

The Landlord's application was filed listing a corporate landlord's name. The Tenant's application was filed listing a personal name, with the initials D.D., as the Landlord.

The undisputed evidence included a copy of the tenancy agreement which listed the Limited Company as the landlord and one tenant whose initials are G.D. The named Tenant, G.D. was the only Tenant who signed the tenancy agreement.

The person named as respondent in the Tenant's application was an owner of the Limited Company. The person who attended this hearing was the owner's son who performed duties as a landlord for the Limited Company.

Based on the aforementioned, I conclude that the owner of the company was served notice of the Tenant's application in his personal capacity as landlord. The Tenant was served notice of the corporate landlord's application. Therefore, the style of cause was amended to include both the owner's name and the Limited Company's name, pursuant to section 64(3)(c) of the *Act*.

While other people may have resided in the rental unit as an occupant, they were not a tenant and were not party to this tenancy or dispute. Based on the foregoing, I find that there is only one Tenant to this dispute. Therefore, the style of cause of this Decision has been amended to remove F.D. as they were not a party to this dispute, pursuant to section 64(3)(c) of the *Act*.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on October 10, 2014, naming one respondent Tenant, to obtain a Monetary Order for: unpaid rent or utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenants (two applicants named) filed on October 24, 2014, to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's Assistant. The Landlord and Tenant gave affirmed testimony and confirmed receipt of evidence served by the Landlord.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Near the end of this proceeding the Tenant indicated that she had submitted a written statement at the time she filed her application on October 24, 2014. There was no evidence received on the Tenant's file and the Residential Tenancy Branch Record indicated that the only document was submitted by the Tenant on October 24, 2014 which was her application form. As a result, the Tenant was given leave to read the statement into evidence. The letter mainly focused on the condition of the rental unit at the start of the tenancy, which was not relevant to the matters before me. As such I instructed the Tenant to move past the rental unit conditions and read the remaining items that were relevant to this dispute. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. Is the Tenant entitled to the return of their security deposit?

Background and Evidence

The undisputed evidence was the Tenant entered into a written tenancy agreement that began on February 1, 2014. The tenancy agreement lists an end date of August 30, 2014, and it also has a check mark at section 2(a) which indicates the length of the tenancy was on a month-to-month basis. Rent of \$1,350.00 was due on or before the first of each month and on January 19, 2014 the Tenant paid \$675.00 as the security deposit. The Tenant vacated the unit by the end of September 2014 and provided her forwarding address to the Landlord via text message on October 1, 2014. No move in or move out condition inspection report forms were completed.

The Landlord testified that they are seeking \$1,350.00 for lost rent for October 2014 because the Tenant did not provide them with a month's written notice to end her tenancy. He argued that the Tenant sent them a text message on September 21, 2014

advising they were moving out at the end of the month. He submitted that the rental unit was not rented during the month of October 2014.

The Tenant testified that just prior to the end of August the owner contacted her and told her that she needed to sign a new lease and that her rent would be increased to \$1,500.00. The Tenant stated that she told the owner that she did not have to sign a new lease and that he could not increase her rent because it had not been a full year since the start of her tenancy. She said that the owner became very upset with her and told her that if she did not sign a new lease and pay the higher rent then she would have to move out, which they did the following month. The Tenant filed for the return of double her security deposit.

The Landlord confirmed that his father did tell the Tenant she would have to sign a new lease and her rent would be going up to \$1,500.00. He argued that when he found out the Tenant was refusing to sign the new lease he contacted her and told her that if she was intending to move she would have to give them written notice. The Landlord stated that he had this conversation with the Tenant more than once and explained to her how to end her tenancy properly and that she kept telling him that they were not moving. He said he did not know she was moving until they received her text on September 21, 2014, and by then it was too late to re-rent the unit.

The Tenant disputed the Landlord's testimony and argued that she never had discussions with him about needing to submit a letter; rather, her discussions were always with the owner. She submitted that the owner became very upset with her when she refused to sign the new lease. She said she told the owner she would be moving out at the end of September and that she did not have her forwarding address with her at that time, which caused the owner to become upset with her again.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Landlord's Application

Section 6(3)(c) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Upon review of the written tenancy agreement agreement section 2 lists the start date of February 1, 2014, and an end date of August 30, 2014, is listed in section 2.(b);

however, there is no check mark to indicate that this tenancy was for a fixed length of time. Section 2(a) has a check mark which indicates the length of the tenancy was on a month-to-month basis.

Based on the foregoing, I find the tenancy agreement does not clearly communicate if the tenancy was on a month-to-month basis or if it was for a fixed term lease. Therefore, I conclude that this tenancy reverted to a month to month tenancy as the fixed term lease was unenforceable, pursuant to section 6(3)(c) of the *Act*, as listed above.

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.

Section 52 of the *Act* stipulates that in order to be effective, a notice to end a tenancy given by a tenant must be in writing, signed, dated, list the address of the rental unit, and state the effective date of the notice.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Notwithstanding the Tenant's submission that the owner told her she would have to move out or that she responded by saying she would move out, there is insufficient evidence to prove the Tenant provided the Landlord with proper notice to end her tenancy. The evidence was the Landlord was not able to re-rent the unit for October 1, 2014, which resulted in the Landlord losing one month's rent. Accordingly, I find the Landlord has submitted sufficient evidence to prove his claim for lost rent and I award the Landlord compensation in the amount of **\$1,350.00**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Tenant's Application

Section 23 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and complete a condition inspection report form in accordance with the Regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 35 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

Section 14 of the Regulation stipulates that the condition inspection must be completed when the rental unit is empty of the tenant's possessions, unless the parties agree on another time.

Section 24(2) of the *Act* stipulates that the right of a landlord to claim damage or loss against the security deposit is extinguished if the landlord does not complete the condition inspection report forms and give the tenant a copy in accordance with sections 23 and 35 of the *Act*.

It was undisputed that the Landlord did not arrange to conduct move in or move out inspections and did not complete the required condition inspection report forms. Accordingly, I find that the Landlord did not comply with sections 23 or 35 of the *Act*, and the Landlord's right to claim against the security deposit was extinguished. As a result, the Landlord was required to return the deposit to the Tenant within 15 days of the tenancy end date or the date they received the Tenant's forwarding address in writing.

The evidence was the Landlord received the Tenant's forwarding address on October 1, 2014, and the tenancy ended at the end of September 2014. Therefore, I conclude that the Landlord ought to have returned the Tenant's deposit no later than October 16, 2014, 15 days after they received the Tenant's forwarding address, pursuant to section 38(1) of the *Act*. The Landlord retained the deposit.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. Based on the above, I find that the Tenant has succeeded in proving the merits of their application, and I award them double their security deposit plus interest totaling **\$1,350.00** (2 x 675.00 + \$0.00 interest).

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order I find that the above monetary awards meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlord's award \$1350.00 + Filing fee \$50.00	\$1,400.00
LESS Tenant's award \$1350.00 + Filing fee \$50.00	<u>- 1,400.00</u>
Offset amount	<u>\$ NIL</u>

Conclusion

The Landlord's application was successful and they were awarded compensation in the amount of \$1,400.00.

The Tenant's application was successful and she was awarded compensation in the amount of \$1,400.00.

Each award was offset against the other in accordance with section 72(1) of the *Act* which resulted in no money payable to either party.

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: May 22, 2015

Residential Tenancy Branch

