Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A Monetary Order for the security deposit pursuant to section 38;
b) For compensation for losses suffered when the unit was not ready for occupancy and the landlord refused them entry.

Service:

The tenant /applicant gave evidence that they served the Application for Dispute Resolution by tracked courier and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to her security deposit refunded plus compensation for losses suffered when she could not occupy the unit as promised?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The parties agreed this unit had been vacant for about two months, it had been damaged by previous tenants and the landlord was doing renovations on it. The proposed tenants who are mother and daughter wanted to move-in. Rent was to be $650 and the security deposit $325. The daughter receives Ministry support and they paid her portion of the security deposit which was $162.50 and her half of the first month's rent for September 2015. The mother never paid her part of the security deposit or first month's rent.

The parties agreed that the mother went to the unit on September 30, 2015 to have a mattress delivered and she presented a cheque to the landlord. The landlord said it had been made clear to the proposed tenants that the first month's rent and security deposit had to be paid in full into the landlord's bank account before move-in. They said they

did not want to accept a cheque on a holiday weekend when it could not be verified, especially as the tenants had known the terms well ahead of time. The manager refused to allow the tenants into the unit, although he said he did not deny them access to just store their furniture if they wanted to do that.

The landlord and manager said they were concerned about the suitability of the daughter as a tenant as she complained so much about the unit any time she viewed it. The daughter said she was anxious as to how the renovations were coming along so she dropped in frequently to view them and called the landlord with her concerns at least 6 times because she did not think the unit would be ready in time for move-in. Her mother said the landlord promised them that the unit would be ready 3 to 4 days early. They went over on Saturday evening, August 30th, and even the basic things were not done; for example the bathroom window was not finished so bats could come in and some lower floors were not done. She said her daughter did get upset and voices were raised.

She said when she told the manager she had her rent cheque, he locked the door and refused entry and she stood in the rain to wait for her mattress delivery. Her daughter came back after phoning the landlord; when she found the front and back door locked and the manager not answering his door, she found a stick and pushed a cracked window open and they took in the mattress. They returned to her daughter's place and when her daughter talked to the manager next day (at the landlord's suggestion), the manager yelled he wanted nothing more to do with her. When the moving truck arrived next day, the movers took her daughter's furniture and also took her mattress and dresser into the truck and put it all into a storage unit. The mother said she is living in that building now with her granddaughter and she gives cheques to the manager and he gives them to the landlord with no problems. The manager answered by explaining that they do not accept cheques for initial rent but once tenants have deposited money into the landlord's account and it has cleared the bank, they will take subsequent cheques. They do not want to accept cheques from persons who are not yet tenants occupying the units. Since the mother is now an accepted tenant and occupant, they take cheques from her now.

The landlord said the tenancy was to begin on September 1, 2015 and they usually sign a tenancy agreement with tenants after they have moved in and made good payment. They had no written agreement with these tenants but he said he signed a Shelter Information form for the Ministry stating the amount of rent and security deposit. The form states on the top that it is NOT a tenancy agreement.

The tenants claim as follows:

$910- reimbursement of money paid to movers
$162.50 –damage deposit returned; she did not supply her forwarding address to the landlord in writing.
$189.65- September storage fees for furniture; the tenant said she had to stay with a relative.
$568.95 –for the next 3 months storage fees while she waits to get back into Supportive Housing. She gave her Notice there because of her new rental arrangement.
$567- moving costs to move to new unit.

The tenant said she signed a paper stating 'irreconcilable differences' when she was not allowed to move into the unit and the landlord gave back her rent money but not her portion of the security deposit. She said she was still unable to find a place as of February 18, 2015 when she filed her Application and she had been couch surfing at her daughter's and a friend's as she had to go back on a waitlist and had lost her place in Supportive Housing.

The landlord said it became obvious there were some mental health issues as the daughter had called him incessantly two weeks prior to move-in, being very aggressive and complaining about everything. He said she wanted air conditioning and when they supplied it, she wanted a different kind. He said they did hardwood upstairs and painting was in progress; the tenant agreed but said there were a lot of other damages in the unit which made it not acceptable such as only half a window in the bathroom, mould on the bathroom ceiling, another cracked window, no closet doors and some unfinished floors downstairs.

The landlord noted the daughter had no legal permission to enter and occupy the unit but she yelled at the manager and broke in by breaking a window; this indicated to him that there were some issues and maybe irreconcilable issues with her expectations and their capacity to provide what she wanted. The tenants were supposed to pay the rent and full security deposit in advance but all he heard were objections to the unit. The manager said he had promised they could store some items ahead of time but not move in until rent was paid in full into the landlord's account.

Included with the evidence are Ministry documents showing the daughter's portion of rent was paid and the security deposit, a shelter information form, an Application for Supportive Housing dated September 3, 2014 and invoices and photographs.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, I find the onus of proof is on the tenant/applicant to prove on a balance of probabilities the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the weight of the evidence in this case is that the landlord did not violate the Act or Regulations. I find insufficient information that the unit was not maintained in a state of decoration and repair that complied with health, safety and housing standards in accordance with section 32 of the Act. I find the landlord was renovating the unit and, as the tenant said, had re-done hardwood floors, some painting and provided air conditioning. However, I find the weight of the evidence is that the unit did not meet the tenant's expectations as she complained to the landlord many times during August. I find the tenancy was not to commence until September 1, 2015 so the landlord did not violate the Act by refusing occupancy on August 30, 2015.

Another question is if there was a tenancy agreement and was it violated? A tenancy agreement as a contract may be written, express or implied according to the definition section of the Act. As a contract, there must be a definite offer that is accepted by the other party in a manner that explicitly demonstrates consent to its terms. I find as fact the landlord made an offer to repair and rent the unit but the tenant was dissatisfied with the repairs, complained incessantly and did not supply consideration (rental payment) in advance as specified.

I find the landlord's and manager's evidence credible that they were sufficiently uneasy about the tenant's emotional condition to deny the tenants an early occupancy of the unit as they had not fulfilled the terms of their agreement and appeared so unhappy with the condition of the unit. I find the landlord's credibility supported by the tenant's admission that she broke into the unit by pushing in window glass when the manager would not let her in, yelled at the manager and signed a form stating they had 'irreconcilable differences' and got her rent refunded. I find as fact the parties could not agree on what was a satisfactory condition of the rental unit.

When the tenants came to the unit on August 30, 2015, they complained again about its condition (the manager said the 'mess' was mainly his tools on the floor where he had been working) but I find the tenancy was not to commence until September 1, 2015. I find as fact that the mother, co-tenant, did not fulfill the precondition of paying her portion before arriving to move in. I find on the facts that these parties did not have a

firm tenancy agreement but were still negotiating about satisfactory conditions. Therefore I find the landlord did not violate a tenancy agreement by refusing to rent to them and denying them entry on August 30, 2015.

As I find the landlord did not violate the Act or a tenancy agreement, I find damages incurred by the tenants were not due to an act or neglect of the landlord so I dismiss this portion of their claim. Unfortunately, I find the daughter did not ensure that she was agreeing to rent a unit that would meet her expectations before giving her Notice to End her tenancy at her previous housing.

Although the manager may have agreed to allow them to store some items before the beginning of the tenancy, I find the tenancy was not due to commence until September 1, 2015. Therefore, I find the tenants not entitled to recover costs incurred by them when they tried to move in several days early without fulfilling the pre conditions of paying the full rent and security deposit in advance as instructed. I dismiss this portion of their claim.

However, I find the daughter entitled to recover her security deposit. As the undisputed evidence is that she had not supplied a forwarding address to the landlord, I find her not entitled to the doubling provision in section 38 of the Act. I find her entitled to recover $162.50 which she paid for a security deposit.

Conclusion:

I find the tenant entitled to a monetary order for $162.50 as a refund of her security deposit. No filing fee is involved. I dismiss the other claims of the tenant in their entirety for the reasons stated above.

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 20, 2015

Residential Tenancy Branch