



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 an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for the cost of moving and moving related expenses, for the cost of providing digital evidence and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

The tenant's application was initially heard by conference call on March 23, 2015. The landlord did not attend. The Arbitrator determined that the landlord was served with the hearing package pursuant to s. 89 and s. 90 of the *Act* and accordingly, the hearing proceeded in the absence of the landlord. The tenant was granted a monetary order. The landlord applied for a review hearing and her application was granted. The decision and order dated March 30, 2015 were suspended pending the outcome of the review hearing. The review hearing was scheduled to be heard on this date – June 11, 2015.

Issues to be decided

Is the tenant entitled to her monetary claim?

Background and Evidence

The parties agreed that they met through a mutual friend sometime in February or March of 2014 and during their conversation, the landlord had mentioned that her rental unit was being renovated.

The tenant found that the rental unit suited her needs and the parties started discussing a possible tenancy. Both parties agreed that the start date of tenancy depended on the completion of renovations.

The tenant stated that understood that the tenancy would start on June 01, 2014 and therefore she arranged for her belongings to be moved to the rental unit on May 28, 2014. The landlord argued that the start date of tenancy was not set for June 01, 2014 because the renovations would not be done by that date. She stated that even though the unit was not ready to be occupied, she agreed to allow the tenant to store her belongings in the garage temporarily until the renovation work was complete. The tenant in the upper unit allowed the movers access to the garage, on May 28, 2014.

The landlord stated that on July 05, 2014 she hired a commercial garbage removal company to remove the waste generated by the renovation and had the suite cleaned and the deck, pressure washed. The landlord stated that there was still some work left to be completed which included installing doors and hooking up the appliances.

On July 06, 2014, the tenant attended the rental unit along with her brother to have some electronic equipment installed. The testimony of both parties differed dramatically re the events of July 06, 2014.

The landlord stated that the tenant informed her that she would be in the unit for one day only. The tenant denied having informed the landlord that she would be in the unit for one day only. The tenant stated that on July 06, 2014, she signed a tenancy agreement with the landlord and the landlord informed the tenant that a copy would be provided to her. The tenant stated that the landlord left the unit to make photo copies and did not return. The landlord denied having entered into a written tenancy agreement.

In the prior hearing the tenant informed the arbitrator that there was no written tenancy agreement and that a security deposit was not paid. The parties agreed that the tenant gave the landlord postdated rent cheques starting July 01, 2015.

The landlord stated that since the tenant told her that she would be spending just one day – July 06 - in the rental unit, the landlord left the unit and planned to return the next day to finish cleaning the unit.

Both parties filed copies of conversations by text message. On July 09, 2015, the landlord asked the tenant if she was still in the rental unit and the tenant replied that she had too much work and cleaning to do and was still at the rental unit.

The landlord also asked for a security deposit and pet deposit. The tenant reminded the landlord that she had transported appliances for the landlord along with her belongings and wanted to be compensated. The relationship between the parties began to deteriorate as evidenced in the content of the ensuing text messages.

The tenant agreed that she cancelled the rent cheque for July. The landlord requested rent and when none was forthcoming, on July 20, 2014 the landlord served the tenant with a notice to end the tenancy for nonpayment of rent. The tenant did not dispute the notice and did not pay rent for July. Instead the tenant moved out on July 24, 2014.

The tenant is claiming the following:

1.	Movers to and from rental unit	\$5,200.00
2.	Gas costs to and from rental unit	\$238.59
3.	CDs – evidence	\$26.82
4.	Pizza for movers	\$57.15
5.	Gas costs for helper (move)	\$135.00
6.	To moving helper	\$100.00
	Total	\$5,757.56

Analysis

Based on the testimony of both parties, I find that the parties created a verbal tenancy agreement subject to their mutual understanding of the circumstances. The start date of the tenancy was not set but I find that the landlord agreed to allow the tenant to store her belongings in the garage of the rental unit, until the renovation work was complete.

The landlord argued that a security deposit was not paid and therefore a tenancy did not exist. Pursuant to s17 of the *Residential Tenancy Act*, a landlord may require a security deposit as a condition of entering into a tenancy agreement. In this case even though the tenant did not pay a security deposit, I find that a tenancy agreement existed between the two parties.

Based on the testimony of both parties I find the following:

The parties entered into a verbal agreement, to create a tenancy at the dispute rental address sometime in February or March 2014.

The start date of the tenancy depended on the completion of renovation work at the rental unit

The landlord agreed to allow the tenant to store her belongings in the garage of the rental unit, until it was ready to be occupied.

The tenant moved in on July 06, 2014.

The tenant provided the landlord with postdated rent cheques.

The tenant cancelled the rent cheque for July 2014

The landlord served the tenant with a notice to end tenancy.

The tenant did not pay rent, did not dispute the notice and moved out on July 24, 2014.

Since I have determined that a tenancy agreement was entered into by the parties, I further find that the rights and obligations of a landlord and tenant under the tenancy agreement took effect from the date the tenant moved into the rental unit.

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on July 20, 2014 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. The tenant moved out on July 24, 2014 without providing the landlord notice to end the tenancy.

The tenant testified that the reason for ending the tenancy was that the rental unit was uninhabitable. Prior to moving in the tenant was well informed about the ongoing renovation work. I further find that the landlord has proven that she hired a professional commercial company to remove the construction debris just prior to the date the tenant wanted to install some electrical equipment.

The landlord has also proven that the remainder of the renovation work was minimal and that she fully intended to have it completed as soon as possible. The tenant had the option of applying for an order directing the landlord to complete the work that was ongoing inside the rental unit. Instead, the tenant chose to move out. In addition the tenant did not pay rent for July even though she occupied the unit for a portion of July.

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. Based on the testimony of both parties, I find that the tenant did not pay rent for July 2014 and moved out on July 24, 2014.

Since the tenant occupied the rental unit for part of July, did not pay rent and moved out without proper notice, the landlord not only did not receive rent for July but also may have suffered a loss of income for August,

The loss claimed by the tenant is substantial. Pursuant to section 67 of the *Act*, the tenant must prove the damage or loss that she has incurred and prove that the loss incurred stemmed from the landlord's failure to comply with the tenancy agreement or the legislation.

In this case, I find that the landlord was not negligent and intended to complete the remainder of the renovation work. I find that the tenant has not proven that the rental unit was uninhabitable. I further find that the tenant chose to move out and therefore must bear the costs of moving and moving related expenses.

The legislation does not permit me to award any litigation related costs other than the filing fee and accordingly the tenant's claim for filing digital evidence is dismissed. The tenant has not proven her claim and must bear the cost of filing her own application.

Conclusion

The tenant's application is dismissed 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: June 11, 2015

Residential Tenancy Branch

