



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with a tenant's request for return of rent she paid for the rental unit for the month of January 2015. The tenant submitted registered mail receipts as proof she served each named landlord with the hearing documents. The landlord appearing at the hearing confirmed that she was representing both named landlords. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

In filing her Application the tenant did not specify the amount she was seeking or that she was seeking a Monetary Order in the space provided on the form; however, the details of dispute were sufficiently clear and the landlord confirmed that she understood the tenant was seeking a return of the amount she paid in rent for the month of January 2015. Accordingly, I amended the tenant's Application to reflect the correct dispute code and the amount claimed as \$975.00 – the amount of rent paid for January 2015.

Issue(s) to be Decided

Is the tenant entitled to return of the rent she paid for January 2015?

Background and Evidence

In December 2014 the landlord and tenant executed a written tenancy agreement that provided for the commencement of the tenancy as of January 1, 2015 on a month to month basis and the tenant paid the security deposit equivalent to one-half of the monthly rent. The tenancy agreement provided that the tenant was to pay rent of \$975.00 on the 1st day of every month. On December 26, 2015 the tenant paid the rent for January 2015 to the manager, in cash. The manager issued a receipt to the tenant. The tenant was given the keys to the rental unit in late December 2014 and had started moving in a few of her possessions.

The tenant claimed that when her daughter was in the unit on December 28, 2014 her daughter started coughing badly. Upon returning home, the tenant saw a negative posting on the internet about the residential property.

It was undisputed that after seeing the negative internet posting the tenant contacted the manager to advise the manager about the posting and her concerns. The manager denied the statements to be true to the tenant and the landlord suspected that it was posted by a disgruntled tenant in a neighbouring unit.

The tenant decided not to move-in to the rental unit. The tenant gave the manager a written notice to end the tenancy. The notice is dated December 28, 2014 although the parties were uncertain as when exactly it was given to the manager. The tenant submitted that it was given to the landlord before the end of December 2014. The manager indicated that it may have been given at the very end of December 2014 or early January 2015.

In response to the tenant's notice the landlord informed the tenant that they would refund the rent she paid for January 2015 if they were able to re-rent the unit for January 2015. The landlord described their efforts to contact other prospective tenants who had shown interest in the unit only to find out those prospective tenants had since found other accommodation. The landlord also submitted that they commenced efforts to find other tenants but that January is a difficult month in which to find tenants.

The landlord was unable to re-rent the unit for January 2015 and did not refund any of the rent the tenant paid for January 2015 but the landlord did return the tenant's security deposit to her.

The tenant's reasons for seeking return of the rent she paid for January 2015 were that she had paid rent in cash and if she had paid rent by way of a cheque she could have put a stop payment on it. Further, the tenant was put off by the posting she saw on the internet and had concerns as to whether they may be true.

Analysis

In order to succeed in a monetary claim, the applicant must demonstrate that the other party violated the Act, regulations or tenancy agreement, among other things; or, a legal entitlement to the amount claimed as provided under the Act.

Section 16 of the Act provides that the obligations of a landlord and tenant take effect from the time a tenancy forms. Below, I have reproduced section 16 for the parties' reference.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[reproduced as written]

In this case, the tenant paid a security deposit and signed a tenancy agreement both of which signify the formation of a tenancy and establish the date the tenancy agreement is entered into. These events took place in the month of December 2014 and that is when the tenant became obligated to fulfill the terms of her tenancy.

I was also provided undisputed testimony that the tenancy was to be on a month to month basis. The Act provides that a tenant may end a month to month tenancy by giving the landlord at written notice that is effective at least one full month after the notice is given and on a date that is before the day rent is due. In other words, if a tenant is required to pay rent on the 1st day of every month and the tenant gives a notice to end tenancy on December 31, 2014 the soonest the notice would be effective is January 31, 2015.

The written notice must contain an effective date. Failure to provide an effective date or an incorrect effective date does not invalidate the Notice. Rather, section 53 of the Act provides that the effective date automatically changes to comply.

In this case, the tenant gave the landlord a written notice dated December 28, 2014 but it did not contain an effective date and it was unclear as to when exactly it was given to the landlord. Assuming it was given by the end of December 2014 as the tenant alleges, the effective date would have to be no earlier than January 31, 2015. Therefore, in these circumstances, the tenancy was set to end January 31, 2015 by way of the tenant's notice and the tenant was obligated to pay rent for January 2015, which she did.

Although I appreciate the tenant was reluctant to move in after reading the internet posting, it is important to consider that the tenant relied upon an anonymous posting that contained information that was not verified to be true and the allegations were denied by the landlord. While the tenant's decision to not continue to move in was her right to do, that did not end her legal obligation to fulfill her contractual and legal obligations established under the tenancy agreement and the Act.

I heard the landlord had agreed to refund rent to the tenant if they were able to re-rent the unit for the month of January 2015 which is reasonable in the circumstances; however, I was provided undisputed evidence that the unit was not re-rented. I also accept that given the tenant's late notice the chances of re-renting the unit to a suitable tenant would have been slim.

Therefore, I find there is insufficient evidence to conclude the landlord breached this agreement with the tenant.

In light of all of the above, I find the tenant was bound to fulfill the tenancy agreement she entered into and to end it by giving the landlord one month's written notice as required under the Act. The tenant gave insufficient notice to end the tenancy and the landlord was unable to re-rent the unit for January 2015. I was not provided sufficient evidence to conclude that it was the landlord that violated the Act, regulations or tenancy agreement with respect to this tenancy. Therefore, I find the tenant is not entitled to a refund of the rent she was obligated to pay for January 2015 and her application is dismissed.

With respect to the tenant's comment that she could have put a stop-payment on a cheque, the tenant should be aware that doing so would have put the landlord in a position to pursue the tenant for unpaid and/or loss of rent as she would have violated the Act, regulations or tenancy agreement in doing so.

Conclusion

The tenant's application 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: August 21, 2015

Residential Tenancy Branch

