



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the landlord advised that he had submitted evidence to the Residential Tenancy Branch and to the respondent, but as neither the Branch nor the respondent had received that evidence, I have considered only the verbal testimony of the parties in arriving at this decision.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant moved into the rental unit on or about March 29, 2015 after having paid a \$200.00 security deposit to the landlord's parents, who were appointed by the landlord to act as his agent. The landlord testified that he had given his parents strict instructions to screen tenants and upon acceptance, ensure that the tenants paid the first month's rent of \$1,275.00 plus a \$640.00 security deposit prior to providing the tenants with keys. The landlord claimed that the tenants took advantage of his elderly parents to receive keys without paying all they were supposed to.

The tenants claim that rent was set at \$1,000.00 per month and that the landlord's parents told them to arrange for payment with the landlord upon his return from a trip outside of the country.

The parties agreed that upon the landlord's return, he told the tenants that he did not want them living in the rental unit and on Friday, April 3, he took the keys from them. The tenants left the city for the weekend and the parties agreed that upon their return on April 5 or 6, the landlord told her to remove their belongings. The landlord moved the

tenant's belongings out of the rental unit on April 9. The parties further agreed that the tenant mailed her forwarding address to the landlord on May 22.

The landlord seeks an award for unpaid rent for the months of April and May, the balance of the security deposit which the tenant failed to pay and \$600.00 as the cost of replacing the carpet, which he claims was badly damaged by the tenant.

Analysis

The landlord appointed his parents to act as his agents and he is bound by the actions of his agents. Although the landlord claimed that he did not have a tenancy with the tenant as he did not agree that she should rent the unit, his agents accepted a security deposit and provided her with access to the unit. I find that there is a valid tenancy in place between the parties.

There is no written tenancy agreement. While the landlord claims that the rent was set at \$1,275.00 per month, the tenant claims it was just \$1,100.00 per month. In the absence of evidence to corroborate the landlord's claim that the rent was set at \$1,275.00, I find that it was the lower amount of rent and that the tenant was obligated to pay \$1,100.00 in rent.

While it is true that the tenant was obligated under the terms of the tenancy agreement to pay \$1,100.00 in rent for the month of April and that she failed to do so, this did not give the landlord to end her tenancy without notice. The *Residential Tenancy Act* provides very clear instruction to landlords as to how to end a tenancy. The landlord should have given the tenant a 10 day notice to end tenancy for unpaid rent and if she failed to pay the rent to cancel the notice, he could have applied to the Residential Tenancy Branch for an order of possession. Instead, the landlord chose to take matters into his own hands and operate outside the law by taking the keys from the tenant on April 3 and removing her belongings on April 9.

Because the landlord deprived the tenant of the use of the rental unit and refused to permit her to occupy the unit, I find he is only entitled to recover rent for those days in which she was able to access the unit. I find that the landlord is entitled to 5 days of rent, which represents 2 half days on March 29 and April 3 and 4 full days from March 30 – April 2. The \$1,100.00 pro-rated rental amount is \$36.66 per day. I award the landlord \$183.30. Because the landlord illegally ended the tenancy and wrongfully denied the tenant access to the rental unit, I find that he is not entitled to any further rental monies.

The landlord claimed that the tenant damaged the carpet, but provided no evidence to corroborate this claim. I find that the claim is unproven and I dismiss the claim for the cost of replacing the carpet.

As the landlord was the author of his own misfortune through disregarding his obligations under the law, I find he should bear the cost of his filing fee.

The landlord has been awarded \$183.30. I order him to retain this amount from the \$200.00 security deposit and I order him to return the balance of \$16.70 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$16.70. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain \$183.30 from the security and is ordered to return the \$16.70 balance to the tenant.

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: November 10, 2015

Residential Tenancy Branch

