



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BBH Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

The landlord submitted that he had received an email from the tenant on January 13, 2016 stating there was an attachment as evidence for this proceeding. However, the landlord stated that no attachment was provided. The tenant confirmed the attachment was supposed to be her doctor's letter that she had submitted to the Residential Tenancy Branch on January 12, 2016.

Section 88 of the *Residential Tenancy Act (Act)* allows a tenant to serve a document to a landlord by leaving a copy with the person or an agent of the landlord; sending a copy by mail or registered mail to the address at which the landlord resides or conducts business as a landlord; leaving a copy at the residence with an adult who apparently resides with the landlord; by leaving a copy in a mailbox or mail slot for the address at which the landlord resides or conducts business as a landlord; by attaching a copy to a door or other conspicuous place at the address at which the landlord resides or the address at which the landlord conducts business as a landlord; or by transmitting a copy by fax number provided as a service address by the landlord.

As the tenant attempted to serve the landlord in a manner not acceptable under the *Act* and based on the landlord's undisputed testimony that the attachment was not attached I find the tenant did not serve the landlord with her doctor's note and I have not considered the written document in this decision. However, I note the letter was read into the hearing and as such, I have considered the content of the letter.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for liquidated damages; for cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the

Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a tenancy agreement signed by the parties on November 10, 2014 for a 1 year fixed term tenancy beginning December 1, 2014 for a monthly rent of \$675.00 due on the 1st of each month with a security deposit of \$337.50 paid.

The tenancy agreement stated there was a 5 page addendum with 28 additional terms. The addendum submitted contained 5 pages with 30 additional terms. I also note the addendum is not signed or dated but does have one set of initials in the bottom right hand corner of each page.

Term 30 of the addendum states: "if the tenant wishes to break the lease and leave before the expiration of the lease, the tenant agrees to pay the fair liquidated damages amount of \$500.00". The clause goes on to explain what the compensation will be used for, such as: advertising; screening potential tenants; drawing a new lease; checking in and out each tenant; and other required duties.

The parties agreed the tenant moved out of the rental unit on or before March 1, 2015. The landlord stated the tenant moved out on March 1, 2015 without any prior notification from the tenant. The tenant testified that she had sent the landlord an email to the property manager on February 8, 2015 and vacated the property on February 28, 2015.

The landlord submitted that he was able to re-rent the rental unit to a new tenant for April 1, 2015. The landlord seeks compensation for lost revenue for the month of March 2015 in the amount of \$675.00. The landlord also seeks compensation in the amount of \$500.00 for liquidated damages.

The tenant submitted that she had entered into the tenancy agreement when she had been hospitalized and was in a state of mind that rendered her unable to make financial decisions and was not aware the agreement was for a fixed term of 1 year. The tenant testified that she had first looked at the rental unit prior to being hospitalized and that her health care professionals granted her a day pass specifically so she could go out to sign the tenancy agreement.

The landlord testified that, even though he was not there at the time, his staff are trained to go through the terms of the tenancy agreement and addendum prior to the new tenant signing the agreement. He stated that when going through the terms of the addendum his staff will read, aloud, each term to ensure the new tenant is made aware prior to signing.

The tenant testified that she does not remember anyone reading through the tenancy agreement or that there even was an addendum. She stated she simply went to the

property; signed the agreement and left. In addition, she stated that she was unaware it was a fixed term tenancy until she submitted her notice to end the tenancy.

The landlord also seeks compensation in the amount of \$140.00 for cleaning the rental unit at the end of the tenancy. In support of this claim the landlord submitted an invoice for 7 hours work at \$20.00 per hour to clean the unit "to a move in condition". The landlord did not provide a Condition Inspection Report and any other documentary evidence recording the condition of the rental unit at either the start or the end of the tenancy.

The tenant testified that she had thoroughly cleaned the rental unit prior to vacating the rental unit.

Analysis

The three basic tenets of a contract are consensus; consideration; and competency. In this case the tenant submits that, at the time she signed the tenancy agreement, she was not of sound mind and unable to make financial decisions. As a result, the tenant asserts that she was not aware the tenancy was for a specific length of time or that there was any form of liquidated damages clause in the agreement.

However, from the tenant's testimony, I find it is unlikely, on a balance of probabilities, that health care professionals, who had hospitalized the tenant because she was, at least in part, unable to manage her financial affairs would have released her from the hospital on a day pass specifically to go enter into a tenancy agreement.

As the tenant has provided no other documented medical or competency assessment or confirmation from any authority that she was unable to manage her financial affairs, I find the tenant has failed to provide sufficient evidence to establish that she did not have the competency to enter into this tenancy agreement.

In addition to this finding, I find that the notation in the tenancy agreement stipulating 28 additional terms in the addendum compared to the actual number of additional terms (30) makes it unclear whether or not the addendum submitted is the same addendum the tenant may have seen. At the very least, if the addendum had only 28 terms and term 30 is about liquidated damages, I find that terms 29 and 30 *may* not have been agreed upon by the tenant.

As a result of these findings, I find the landlord and tenant entered into 1 year fixed term tenancy agreement beginning December 1, 2014 and that the additional terms in the addendum are not enforceable.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy

agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As the tenant has provided no evidence that the landlord had breached a material term of the tenancy or that she had provided the landlord with a notice of a breach of a material term I find the tenant was obligated to not end the tenancy until the end of the fixed term.

Therefore, I find the tenant is responsible for the payment of rent until the end of the fixed term subject only to the landlord's obligation to mitigate any losses. I accept the landlord secured a new tenant for April 1, 2015 thus limiting the tenant's responsibility to compensation for the loss of revenue for the month of March 2015 only.

In regard to the landlord's claim for liquidated damages, as I have determined the clauses in the addendum are not enforceable I find the landlord is not entitled to liquidated damages and I dismiss this portion of the landlord's claim.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

When two parties provide equally plausible, but different versions of events or the condition of the rental property the party making the claim has the burden of providing additional or corroborating evidence to substantiate their claim.

In this case, I find the landlord has provided no evidence at all of the condition of the rental unit or any need for cleaning at the end of the tenancy. I find that while the landlord submitted an invoice for 7 hours of cleaning, the invoice itself does not confirm a need for cleaning but only that the landlord had the rental unit cleaned. I also find the tenant has refuted the landlord's testimony.

In the absence of any corroborating evidence from the landlord I find the landlord has failed to establish there was a need to have the rental unit cleaned. As a result, I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$700.00** comprised of \$675.00 lost revenue and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$337.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$362.50**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: January 22, 2016

Residential Tenancy Branch

