



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes
Introduction

MNDC, MNSD, FF

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit, including double the amount, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to a return of all or a portion of her security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The facts of this case are not in dispute and are summarized below.

A written tenancy agreement was entered into and signed by the parties on October 1, 2015. A copy of the written agreement was provided on file. The tenancy began on October 1, 2015 with a monthly rent of \$2300.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1150.00 at the start of the tenancy. The written agreement was for a fixed term lease which expired on February 29, 2016. Both parties initialed the agreement indicating that at the end of the lease the tenancy is ended and the tenant must vacate the rental unit.

The tenant originally moved into the rental unit in 2013. The rental unit had been rented continuously by family and friends since 2008 by way of a series of one year fixed term leases. In the beginning of February 2016 the parties began communicating with respect to renewing the lease which was set to expire at the end of the month. There was a series of text messages

between the tenant and the property manager to arrange a meeting to sign the lease renewal but a meeting never materialized. On February 28, 2016, the property manager sent a message to the tenant advising that the landlord was now wanting to sell the unit and no longer wanted to renew the lease. The property manager advised the tenant that the landlord was offering a one month extension to the lease to allow the tenant an opportunity to find a new home. The parties met on February 29, 2016 during which the tenant was made an offer to sign a one month lease extension. The tenant did not feel comfortable signing the lease extension and instead took the document home with him to review. The tenant did not sign the lease extension or vacate the rental unit. The tenant was advised that if he did not sign the one month lease extension he would be issued an eviction notice. On March 2, 2016 the tenant discovered that the rent for the month of March had been deducted from his bank account. The tenant e-mailed the property manager stating that as a result of this rent payment they were now in a month-to-month tenancy. The property manager responded by stating that as no lease has been signed the March rent will be reversed and an eviction notice would be issued. On March 7, 2016 the property manager sent the tenant an e-mail stating that the landlord has accepted his March 1, 2016 "electronic funds transfer" payment for use and possession for the month of March 2016 only. In this e-mail, the landlord also notified the tenant that it had filed an application for an order of possession a hearing for which was scheduled for April 8, 2016. The tenant voluntarily vacated the rental unit on April 1, 2016.

The tenant argues that he had no choice but to vacate the rental unit as the landlord had applied for an order of possession. The tenant's position is that the tenancy should not have ended but rather reverted to a month-to month tenancy in which case the landlord was required to provide two months' notice to end the tenancy. The tenant argues that by requiring a series of fixed term lease extensions the landlord is circumventing the notice requirements of the Act. The tenant further argues that withdrawal of the funds by the landlord for March 2016 rent after the expiry of the fixed term was a waiver by the landlord to end the fixed term tenancy. The tenant submitted a copy of the one month lease extension which was offered to the tenant but not signed. In this lease extension offer, the landlord checked off the box that the tenancy would continue on a month to month basis. The tenant argues that this further supports his argument that the tenancy continued on a month-to-month basis.

The tenant is claiming compensation for one months' rent as the landlord failed to provide two months' notice under the Act. The tenant claims that he suffered loss of quiet enjoyment for the month of March 2016 due to the stress caused by having to find a new home in such short time. The tenant is claiming moving costs in the amount of \$500.00. The tenant is also claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenant forwarding address in writing. The tenant is relying on its application for dispute resolution as evidence of providing the forwarding address. The tenant acknowledged receiving a cheque in the full amount of the security deposit since the filing of the application.

The landlord argues that the tenancy was a fixed term tenancy which ended on February 29, 2016 and as per the signed agreement the tenancy ended on this date. The landlord tried to

offer the tenant a one month extension but the tenant refused and a new agreement was not signed. The landlord clearly communicated to the tenant that his options were to sign the one month extension or to move out immediately. The landlord followed up on their actions by filing for an order of possession. The rent payment for March was withdrawn from the tenants account as he was set-up on automatic electronic funds transfer, however, the landlord made it clear that they were accepting this payment for use and occupancy only as the tenant had not vacated the rental unit. With respect to the claim for the security deposit, the landlord testified that they were never provided a forwarding address by the tenant and in either event, the full amount was returned within 15 days of receiving the tenant's application for dispute.

Analysis

Pursuant to Section 44 of the Act, a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit on the date specified as the end of the tenancy.

In this case, the fact that the parties entered into a fixed term tenancy was not in dispute. The agreement entered into and signed by both parties required the tenant to vacate the rental unit by February 29, 2016. I do not accept the tenant's argument that the landlord waived their right to end the tenancy by accepting payment for March rent. Rather, the landlord's intentions were clear from the outset that the tenancy would end unless the tenant signed a one month extension. The landlord was entitled to keep the rent for the month of March as the tenant had not vacated the rental until. The fact that the landlord applied for an order of possession as early as March 7, 2016, clearly demonstrates the landlord's intentions to end the tenancy. I dismiss the tenant's argument that the series of fixed term leases constitutes a circumvention of the Act by the landlord. The tenant knew the terms of the tenancy agreement and agreed to those terms when the agreement was signed. The one month lease extension agreement provided as evidence by the tenant was never signed so it is of no effect. As the tenancy was ended in accordance with the Act, I dismiss the tenants claim for damages in the amount of one month's rent plus any claim for moving costs.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant is relying on the service of the application for dispute resolution as the method of providing the landlord with a forwarding address for the purpose of requesting a return of the security deposit. The tenant acknowledged receiving the security deposit but argues it was not received within 15 days of providing the landlord with the forwarding address. I find the application is not on its own clear that a forwarding address is being provided by the tenant for the purposes of the return of the security deposit. The tenant did not provide any evidence that a forwarding address was provided to the landlord aside from in the dispute application. I dismiss the tenant's claim for double the security deposit.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 06, 2016

Residential Tenancy Branch