



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

Both parties testified that in response to an advertisement on the internet, the tenant viewed the rental unit and later signed a tenancy agreement on October 7, 2015. As per the submitted tenancy agreement and testimony of both parties, the tenancy was to begin on November 1, 2015. The tenancy agreement specifies both a month-to-month "or fixed term tenancy of one year." The agreement does not specify an end date of the fixed term. Rent in the amount of \$1,800.00 was to be payable on the first of each month. The tenant remitted a security deposit in the amount of \$900.00 on October 15, 2015 and the landlord later reimbursed this deposit to the tenant on October 22, 2015.

Tenant

The tenant testified that upon signing the tenancy agreement on October 7, 2015, the landlord indicated it was month-to-month but at the tenant's insistence agreed to and initialed the specification "or one year." The tenant provided a copy of an email exchange between both parties, where the tenant sought confirmation the tenancy was for a fixed term of one year. The tenant did not provide an email response from the landlord that addressed the term of the tenancy. The tenant testified that after providing a security deposit and first month's rent to the landlord, she received written notification from the landlord via email on October 22, 2015 that the rental unit had been sold and was no longer available. The landlord returned both the first month's rent and security deposit to the tenant on October 22, 2015. The tenant stated that she did not know the unit was for sale at the time she entered into the tenancy. The tenant said that did not see a sale sign at the property upon viewing and had no knowledge of the sale.

The tenant stated that she secured another rental unit for the same tenancy start date of November 1, 2015. However, the tenant still seeks compensation for hotel accommodation, storage costs, moving expenses, the security deposit, a half month's rent, the increased rent she now pays at her new unit and the filing fee for this application.

The tenant testified that in most cases, tenants can move in prior to the first of the month; yet, in this case, she had to stay in a hotel for the night of October 31, 2015. She confirmed that the tenancy with both the landlord and her new rental unit commenced November 1, 2015 and effectively she would have incurred the cost of a hotel with either tenancy. Nonetheless, the tenant seeks reimbursement in the amount of \$106.61 for the hotel cost.

In regards to the storage costs, the tenant testified that because it was unknown whether she would be able to secure another rental unit for November 1, 2016, she paid

a non-refundable deposit on a storage unit in the amount of \$72.60. The tenant seeks reimbursement of this cost from the landlord.

The tenant testified that she incurred \$266.10 in moving costs and has provided a copy of her banking transactions to substantiate this. The tenant testified that she incurred further moving expenses in the amount of \$350.00. The tenant confirmed she likely would have incurred the same moving costs had the original tenancy agreement been honoured. In total, the tenant seeks reimbursement of \$616.10 in moving costs.

The tenant stated that she understood that because the landlord did not provide proper notice to end her tenancy, under the *Act* she was entitled to the return of double the amount of her security deposit in the amount of \$1,800.00 and compensation equivalent to half a month's rent in the amount of \$900.00. The tenant acknowledged that she had already been reimbursed her security deposit of \$900.00. Accordingly, the tenant only seeks the remaining \$1,800.00 for the security deposit and half a month's rent

The tenant provided a copy of the tenancy agreement for the new rental unit she secured which indicates a monthly rental rate of \$2,200.00. The tenant is seeking the \$400.00 rent difference which she now pays, for a period of twelve months, totalling \$4,800.00.

The tenant seeks to recover the \$100.00 filing fee for this application from the landlord. In total, the tenant seeks \$5,345.00 in compensation. However, based on the information and testimony the tenant provided, I find that the tenant is actually seeking an increased amount of \$7,495.31.

Landlord

It is the landlord's position that the tenant knew that the rental unit was for sale. He said that the tenant would have observed the sale sign on the front lawn of the rental unit when she viewed the property. He also claimed that the tenant would have discovered the sale listing when she searched the rental unit on the internet. The landlord testified that because the property was listed for sale, the tenancy was a month-to-month agreement. The landlord denied initialing the tenancy agreement indicating that it was a fixed term and alleged that this was fraudulently done by the tenant. The landlord testified that upon notifying the tenant of the sale, the tenant did not request more time to find a new place; he said the tenant recovered her security deposit and first month's rent without complaint.

Analysis

Pursuant to section 16 of the *Act*, 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.

The tenancy, that is, the right to occupy the unit, often begins at a later date. In this case, the tenancy agreement began on October 7, 2015 and the tenancy was to commence on November 1, 2015. Because the tenancy agreement began on October 7, 2015, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

Section 7 of the *Act* establishes that upon entering a tenancy agreement, a tenant is obligated to pay rent and a landlord is obligated to provide the premises as agreed to in the tenancy agreement. If either party fails to fulfill their obligations, the other becomes entitled to compensation. The purpose of compensation is to ensure the wronged party is made whole as if the breach did not occur. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the *Regulation* or their tenancy agreement must do what is reasonable to minimize the damage or loss. In this circumstance, the tenant was unable to occupy the rental unit but managed to mitigate some of her losses by securing another rental unit for the same tenancy start date.

Based on the above, the evidence and testimony, and on a balance of probabilities, I make the following findings.

The tenant would have incurred the same hotel and moving costs had the original tenancy agreement been honoured. Therefore, I dismiss this portion of the tenant's claim in the amount of \$722.71. I find it probable that the tenant was uncertain whether she could secure a new tenancy in a short matter of time and made contingency plans to store items. For this reason, I award the tenant reimbursement of the non-refundable storage deposit of \$72.60.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or to return the full deposit. Based on the tenant's own testimony, the landlord returned the deposit within 15 days on October 22, 2015. Therefore, I find that the landlord has complied with the *Act* and the tenant is not entitled to double the amount of the security deposit.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit. In this circumstance, the landlord must issue a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). Section 51 of the *Act* establishes that a tenant who receives a notice to end tenancy under section 49 is entitled to receive an amount that is equal to one month's rent payable under the tenancy agreement. Although the landlord had an obligation to provide the proper 2 Month Notice, the landlord failed to do so and thereby eliminated the tenant's entitlement to compensation of one month's rent. I find the tenant's claim to half a month's rent fell under this provision and therefore dismiss this portion of the tenant's claim.

In the absence of a date specifying when the tenancy was to end on the tenancy agreement, and based on both parties' testimony, I find it more probable that the tenancy was a month-to-month agreement, rather than a fixed term. The email exchange that the tenant provided in the form of documentary evidence, showed a different size and font was used for the term "one year lease." When asked about this discrepancy, the tenant replied that "sometimes" her "computer did that." For these reasons, I find the tenancy was a month-to-month agreement.

I find the tenant's claim to compensation is a direct result of the landlord's non-compliance with the *Act*, specifically the landlord's failure to provide the rental unit as indicated in the tenancy agreement. Although the tenant mitigated her loss by securing a new rental unit, I find that the tenant still endured a loss by having to act quickly in finding a new rental unit and pay a higher monthly rent. For these reasons and based on my finding that the tenancy was a month-to-month agreement and not a one year fixed term, I award the tenant six months of the \$400.00 additional rent she pays in her new unit for a total amount of \$2,400.00.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

As the tenancy has ended, I dismiss the tenant's claim for an order requiring the landlord to comply with *Act*, *Regulation* or tenancy agreement.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,572.60 against the landlord.

The tenant's application for an order requiring the landlord to comply with *Act*, *Regulation* or tenancy agreement is dismissed 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: July 08, 2016

Residential Tenancy Branch