



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPB, OPR

Introduction

In the first application, the tenant seeks to recover a \$575.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “RTA”).

In the second application, the landlord seeks a monetary award for lost rent and the cost of locating a new tenant.

The tenant names Ms. X.M. as a respondent landlord. It is clear that Ms. X.M. is the landlord’s property agent and was not named as a landlord in the tenancy agreement. The respondent Ms. X.T. is the landlord and the only proper respondent.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that there was a binding and enforceable tenancy agreement? If so, was the tenant entitled to cancel it? If not, what if anything is the landlord owed?

Background and Evidence

The rental unit is a one bedroom condominium apartment.

There is a written tenancy agreement signed by the tenant but not by the landlord. It indicates that the tenancy was to start on March 1, 2016 for a one year fixed term. The monthly rent was to be \$1150.00. The document calls for a \$575.00 security deposit to be paid by February 27. The tenant paid that deposit money and the landlord still holds it.

The tenant did not pay the March 1 rent. She says that she initially viewed the apartment on February 25 and agreed to take it. She signed the tenancy agreement on February 27.

However, she says, when she viewed the rental unit a second time, on February 28 after the previous tenant had removed her furniture, she noted a number of areas of damage and wear. She says the areas of concern were not apparent at her first inspection because they were hidden by the previous occupant's belongings.

The tenant provides a number of photos showing areas that show wear, minor wall chipping and counter and cupboard veneer delamination or loss. She says the sink leaked as well and the entryway was not safe.

She says she emailed the landlord to inform her that the apartment was not approved by her. She says the landlord responded that she would try to find another tenant.

The landlord denies the premises were unsuitable. She refers to an email from the tenant dated March 2 in which the tenant informs her that she needed to cancel the rental because it turned out that the rental unit was not an approved unit for the tenant's subsidy program.

The landlord says she located a replacement tenant to take the rental unit for March 8. She provides a copy of the fixed term tenancy agreement for that new tenant. She says she lost \$268.33 for rent between March 1 and March 8 and had to pay a half month agent fee of \$575.00 to secure the new tenant.

The landlord says that the previous tenant moved out in January and so when this tenant viewed the rental unit in February, it was empty of personal belongings or furniture; all the things the tenant now complains about were apparent then.

Analysis

I find that there was an enforceable tenancy agreement between the parties. It is apparent from the fact of the written agreement, the payment of the deposit and granting of access to the premises by the landlord that an agreement had been reached.

The defects the tenant complains of were minor. Having regard to the modest nature of the rental unit, they fall far below the level of defects that would be sufficient to say the landlord was in material breach or fundamental breach of the tenancy so as to entitle the tenant to walk away from the agreement, as opposed to making a claim for damages.

The tenant was not entitled to repudiate the tenancy.

The landlord was entitled to receive March rent on March 1st. I find that the landlord properly mitigated her loss by re-renting the premises March 8 and that she has suffered a rental loss of \$268.00 for March, for which the tenant is responsible.

I find that as a result of the tenant's wrongful repudiation of the agreement the landlord was put to the additional expense of \$575.00 to find a new tenant.

The landlord is entitled to a monetary award totalling \$843.00.

The tenant is entitled to credit for her \$575.00 security deposit, but not to a doubling of that deposit.

Section 38 of the *RTA* provides that once a tenancy has ended and once the tenant has provided the landlord with a forwarding address in writing, the landlord has a fifteen day window to either repay the deposit money or make an application to keep it. Failure to comply results in a doubling of the deposit money.

In this case the tenant says the address was provided in registered mail sent March 19. She did not provide a copy of the letter or details of the registered mail. Later in her testimony she said the landlord requested her forwarding address by email March 19 and she provided it by way of reply. Copies of these emails were not provided.

The landlord says she received the tenant's forwarding address in an email April 6.

The landlord's application was made no later than April 19.

The onus is on the tenant to prove none compliance with s. 38 and on this evidence she has not done so. .

Conclusion

The landlord is entitled to an award of \$843.00 plus recovery of the \$100.00 filing fee. I authorize her to retain the \$575.00 security deposit in reduction of the amount awarded. The landlord will have a monetary order against the tenant for the remainder of \$368.00.

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 23, 2016

Residential Tenancy Branch