



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on April 8, 2016 for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and, to recover the filing fee from the Tenant.

An agent for the Landlord (the “Landlord”) and the Tenant appeared for the hearing. The Landlord provided affirmed testimony and the Tenant provided affirmed testimony through a translator. The Tenant confirmed receipt of the Landlord’s documentary evidence and confirmed that she had not provided any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

At the start of the hearing, the Landlord stated that she had not provided the tenancy agreement for this hearing and receipts relating to her claim for damages to the rental unit. As a result, the Landlord withdrew her Application for these claims and continued with her monetary claim for unpaid rent and is given leave to re-apply for these portions of her Application. The Tenant did not object to this course of action as she too wanted to provide evidence to refute the Landlord’s claims for these portions.

Issue(s) to be Decided

- Did the Tenant break the fixed term tenancy?
- Is the Landlord entitled to unpaid rent?

- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of her monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on July 27, 2015 for a fixed term of one year and was due to finish on July 31, 2016. Rent for this tenancy was \$1,031.00 payable by the Tenant on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$562.50 at the start of the tenancy which the Landlord still retains.

The Landlord testified that in December 2015, the Tenant was involved in some incident with the police and the Tenant advised the Landlord that she would be vacating the rental unit due to safety reasons. The Landlord informed the Tenant that she would need to provide some type of documentary proof to show that it was essential for her to vacate the rental unit or at the very least to provide one month's notice before she vacated. The Landlord testified that the Tenant simply showed her a letter which had a police file number on it without any details and that this was not sufficient for the Tenant to be released from her obligations to the fixed term tenancy.

The Landlord testified that on January 1, 2016 the Tenant failed to pay rent. As a result, they arranged to do an inspection of the rental unit on January 20, 2016 to see if the Tenant had abandoned the rental unit as she had previously indicated that she was going to be leaving. The Landlord testified that the Tenant had indeed abandoned the rental unit. However, the Tenant dropped the keys off for the rental unit on January 20, 2016 to the Landlord and then provided the Landlord with a forwarding address on April 4, 2016.

The Tenant stated that due to her safety, she had to vacate the rental unit. The Tenant testified that she vacated the rental unit on December 27, 2016. When the Tenant was asked whether she had provided any written notice to the Landlord, the Tenant argued that she informed the Landlord that she would be vacating and that when she went to give the Landlord her written notice, the Landlord stated that there was no need for one and that she was ok to leave the rental unit. The Tenant was asked whether she had any other evidence to support her oral testimony in this respect. The Tenant responded stating that she wanted to submit evidence prior to this hearing but did not know how. However, the Tenant confirmed during the hearing that she had received the documents for this hearing which provided detailed instructions on the service of evidence and the strict time limits a party is required to serve prior to a hearing.

The Landlord denied the Tenant's testimony and stated that the lack of the Tenant's written notice meant that January 2016 rent was unpaid and ultimately lost and without that written notice the Landlord was not able to mitigate rental loss under this tenancy.

Analysis

Firstly, I find that the Landlord made the Application to keep the Tenant's security deposit in lieu of unpaid rent on April 8, 2016. I find that this was made within the 15 day time limit afforded to the Landlord after receiving the Tenant's forwarding address in writing on April 4, 2016.

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement irrespective of whether the landlord complies with the Act. Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act. Section 45 of the Act provides for the process that a tenant must follow if they want to end a tenancy. Part of this process requires a tenant to provide written notice so that a landlord is able to mitigate loss. This part of the Act also allows a tenant to end a tenancy if the landlord had failed to comply with a material term of the tenancy agreement.

In this case, I find there is insufficient evidence that the Tenant provided written notice to the Landlord of the date that the Tenant was going to be ending the fixed term tenancy or vacating the rental unit. The Landlord disputed the Tenant's testimony that she was given permission to end the tenancy without proper notice and the Tenant's testimony in this respect is not substantiated.

Furthermore, the Tenant has failed to provide sufficient evidence to show that the Landlord had failed to comply with a material term of the tenancy agreement that may have given the Tenant a right to break the fixed term tenancy. If the Tenant was faced with a situation where she had no choice but to end the tenancy, then the Tenant was expected by the Landlord to provide sufficient and convincing proof of this so that a potential mutual agreement to end the tenancy could have been negotiated and achieved. Instead, I find the Tenant breached the Act by providing no written notice to end the tenancy and no justification under the Act to break the fixed term of the agreement. Therefore, I award the Landlord the unpaid/lost rent claimed for January 2016 in the amount of **\$1,031.00**.

I also award the Landlord the **\$100.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,131.00**.

As the Landlord already holds \$562.50 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$568.50**.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision. The Tenant may be held liable for the costs of enforcing the order.

Conclusion

The Tenant has breached the Act by ending the fixed term tenancy early. Therefore, the Landlord may keep the Tenant's security deposit in lieu of unpaid rent and the filing fee, and is granted a Monetary Order for the remaining balance of \$568.50.

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: September 19, 2016

Residential Tenancy Branch