



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNR, MNSD, MNDC, FF

Tenant's application: MNDC, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlords attended and the tenant called in and participated with his agent.

Issue(s) to be Decided

Are the landlords entitled to a monetary award including retention of the tenant's security deposit?

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in the landlords' house in Surrey. The landlord testified that the tenancy began on March 23, 2016 on a month to month basis with rent in the amount of \$1,400.00 payable on the first of each month. The tenant paid a security deposit of \$700.00 on April 1, 2016 and the tenant paid rent for April in the amount of \$1,400.00. The landlord testified that the tenant was given a one month Notice to End Tenancy for cause dated April 3, 2016. The Notice was given because the tenant was loud and disturbing, he damaged the rental property and his drug use was affecting other occupants of the rental property. The landlord said that after the tenant was served with the Notice he made threats to the landlord that he would drag out the process, but if the landlord repaid his rent and damage deposit he would move out willingly. The landlord provided copies of text messages sent by the tenant. In a message sent on the morning of April 4, 2016 the tenant said in part that:

...there is no grounds for me to be getting this notice just give me the money back we'll be out asap if not I'll drag it out the legal way and u will lose out on more money then needed I'm trying to deal with it right u don't want us their give the money back and we'll be out asap or it will be longer then u tend it to be (reproduced as written)

The landlord testified that on April 4, 2016 she made an agreement with the tenant to refund most of his April rent payment if he moved out by April 10, 2016. The landlord referred to a hand written form of agreement dated April 4, 2016. The document said as follows:

Upon receiving payment of \$1,100.00, I, (name of tenant) agree to vacate the address of (rental unit address) by April 10 / 2016.

With no damage done and upon return of the key, I, (name of landlord) agree to return the damage deposit of \$700.00 or a portion depending on condition of the suite.

If the premises have not been vacated by April, 10 / 2016, the deposit will be forfeited

The names of the landlord and the tenant were printed on the bottom of the agreement. The agreement was signed by the landlord but not by the tenant.

The landlord testified that on April 4, 2016 she took the agreement together with \$1,100.00 in cash to the door of the rental unit. She met with the tenant and gave him the sum of \$1,100.00. She said the tenant took the money but then refused to sign the agreement. He also refused to give her a receipt for the payment when she asked for one. The landlord testified that the tenant did not move out until May 2, 2016 and he did not return the keys to her.

The tenant filed an application for dispute resolution on April 15, 2016. In his application he applied to cancel a Notice to End Tenancy for cause and claimed a monetary award of \$1,800.00, apparently because he claimed to have had no heat or cable in the rental unit and was given notice to move a week after he moved in. The tenant's application was heard on May 12, 2016. The landlords and the tenant's agent attended the hearing. The arbitrator noted in her decision that:

No hearing was held today as the parties advised that the tenant vacated the rental unit on May 2, 2016. The tenant's agent withdrew the tenant's application in its entirety.

In the landlords' application which was filed on May 12, 2016, she claimed payment of the sum of \$1,100.00 and requested an order permitting her to keep the security deposit. She said that she returned \$1,100.00 to the tenant pursuant to the agreement that he would move out early. The landlord claimed the sum of \$1,100.00 in her application, but she also said in the details of the dispute that she was seeking an additional \$700.00 because of violation of the tenancy agreement and several bylaws.

The tenant filed a second application for dispute resolution on June 9, 2016. It was filed by his agent on his behalf. He said in the application that: "client had no heat or cable during 1 month of tenancy."

In an attached monetary order worksheet the tenant's agent claimed the following:

- Damage deposit: \$700.00
- Rent: \$700.00
- Agent fee: \$500.00
- Move: \$90.00
- Filing fee: \$100.00

The tenant said at the hearing that the landlord did not pay him any money on April 4, 2016 and that is why he did not sign the agreement. The tenant's agent testified that the tenant was deprived of heat during the month of April and did not have cablevision as provided by the tenancy agreement. He said the tenant was supposed to have wifi, or wireless internet service but it was not provided either, just some wires hanging from the ceiling that could not be used for an internet connection.

The landlord testified in reply that the copy of the tenancy agreement produced by the tenant was altered; a check mark was added to indicate that cablevision was provided, but, on the landlord's copy of the agreement the box was blank. The landlord referred to a copy of the advertisement for the rental unit posted in February; it said that rent includes hydro and wifi, laundry is optional but it did not mention cablevision. The landlord's witness Ms. C.K. an occupant of the rental property testified that she was present with the landlord in the upstairs portion of the house of April 4, 2016. She saw the landlord take a handwritten agreement and cash downstairs to give to the tenant. She said that the landlord returned without the money. She asked the landlord why she did not get a receipt from the tenant for the payment.

Analysis

I accept the landlord's testimony that she was frightened by the tenant and agreed to pay him in order to get him to move out of the rental unit. I accept her testimony that

she paid him the sum of \$1,100.00 on April 4, 2016 and that the payment was made because the tenant agreed to move out by April 10th if the payment was made. The landlord's testimony about the payment accords with text messages exchanged between the landlord and the tenant, copies of which were provided as evidence. In one of the messages the tenant said that he needed the cash back to move out right away.

The tenant did not move out on April 10th as promised. I note that at the hearing of the tenant's application for a monetary award on May 12th, the tenant did not pursue his monetary claim and his agent withdrew the application. The tenant did not renew his claim until after the landlord commenced her application to recover money paid to the tenant to move out early. The tenant's agent filed the new application on June 9, 2016. I find the fact that the tenant withdrew his claim for a monetary award on May 12th lends credence to the landlord's testimony that she paid him cash to move out and that this claim filed on June 9th was a retaliatory claim to the landlord's application to recover money paid in vain in order to get the tenant to move out before the end of April.

The landlord's testimony that she paid cash to the tenant on April 4th is corroborated by the testimony of her witness and it accords with the text messages sent earlier that day by the tenant. I accept and prefer the landlord's evidence to that given by the tenant and his agent and I find that the landlord paid the tenant the sum of \$1,100.00 on April 4th in order to secure his early departure. I find that the tenant took the payment, but he refused to move out and remained in the rental unit until May 2nd, contrary to his verbal agreement with the landlord.

The tenant remained in the rental unit for the entire month of April and overheld for two days in May. The landlord was entitled to be paid rent for the duration of the tenant's occupancy and I find that she is entitled to recover the sum of \$1,100.00 that was paid to the tenant for his early departure. The amount is rent owed to the landlord for April. The landlord is entitled to recover the \$100.00 filing fee paid for her application, for a total award of \$1,200.00. The landlord did not claim any amount beyond the sum of \$1,100.00 and the award is limited to the amount claimed.

The tenant advanced a claim in April seeking compensation for what he said was a lack of heat and cablevision. He withdrew that claim and then reapplied to assert the same claim for a second time. The landlord testified that cablevision was not included in the rent; her testimony is supported by the tenancy agreement she submitted as evidence and by the advertisement she provided. The landlord said the tenant was given a password that allowed him to access wireless internet service; the tenant's agent denied that this was the case, but in any event the lack of internet service did not form part of the tenant's claim. I find that the tenant has not proved on a balance of

probabilities that cablevision was intended to be included in rent and this claim is denied.

The tenant complained about a lack of heat, but apart from making the claim, he did not submit documentary evidence to establish the temperature of the rental unit, or provide any meaningful testimony about the extent of the problem. The landlord submitted evidence to show that the house was heated by natural gas and she testified that the tenant was not deprived of heat. I find that the tenant has failed to establish that he is entitled to a monetary award in any amount for lack of heat during the one month of his tenancy. The tenant's claims are dismissed without leave to reapply.

The landlord has been awarded the sum of \$1,200.00 inclusive of the filing fee. I order that she retain the \$700.00 security deposit in partial satisfaction of this award and I grant her an order under section 67 for the balance of \$500.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenant's application has been dismissed without leave to reapply. The landlord has been granted a monetary order as stated.

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: November 10, 2016

Residential Tenancy Branch