



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, OLC, FF.*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of rent, for compensation and for the recovery of the filing fee. The tenant has also applied for the return of the security deposit but during the hearing, the tenant agreed that the landlord had returned the uncashed cheque to the tenant. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Both parties gave affirmed testimony.

The landlord acknowledged receipt of evidence submitted by the tenant. The landlord stated that she had faxed in some evidence to support her case. The landlord was not sure of the date she had faxed it in but stated it was on the Friday before this hearing on March 02, 2017, which would be February 24, 2017. The evidence was not before me and there was no notation on the landlord's electronic file that evidence had been received. The landlord served the tenant with this evidence but the tenant had moved and not provided the landlord with her current address.

Since the landlord was unsure of the date of service of her evidence and the evidence was not before me, this decision is made without consideration of the landlord's evidence.

Issues to be decided

Is the tenant entitled to a monetary order for the return of rent, for compensation and for the recovery of the filing fee?

Background and Evidence

The parties agreed to the following:

On October 10, 2016, the parties entered into a tenancy agreement. The tenancy was due to start on November 01, 2016.

At the time the agreement was entered into, the tenant gave the landlord two cheques dated October 28, 2016. One was for the security deposit in the amount of \$900.00 and the other was for the first month's rent in the amount of \$1,800.00. The landlord requested the tenant to change the dates on the cheques and the tenant agreed to change the date on the security deposit cheque, to enable the landlord to cash it prior to the start of tenancy.

The parties communicated by text messaging and a copy of the conversation was filed into evidence. For the sake of convenience, the tenant agreed to allow the landlord to change the date on the deposit cheque and initial on the tenant's behalf. A text message confirms this arrangement.

The landlord agreed that she made a mistake when she changed the date on the rent cheque instead of on the deposit cheque and cashed the rent cheque. The tenant stated that she was unable to pay for babysitting and faced considerable hardship paying bills, as the landlord had withdrawn \$1,800.00 from her bank account instead of \$900.00.

The tenant stated that she asked the landlord to return the money to her and the landlord refused to do so. On October 18, 2016, the tenant put a stop payment order on the deposit cheque. Later that day, the landlord informed the tenant that she would not be renting the unit to her.

A text message dated October 20, 2016 from the landlord states
"I do not and will not rent to you. Send me your address and I 'll put a cheque in the mail"

The tenant reported the matter to the police and the landlord received a visit from a police officer on October 20, 2016. During the hearing, the landlord confirmed that she spoke to the police officer and let him know that she would not rent to the tenant. The tenant testified that she made a report to her bank informing them that the landlord had initialled the date change on the rent cheque without her permission. The bank reversed the amount of \$1,800.00 to the tenant's bank account.

On October 25, 2016 the parties met and the landlord returned the deposit cheque to the tenant. The landlord stated that on that day she offered to rent the unit to the tenant but the tenant refused to accept the offer. The tenant stated that she had already started looking for another place and had found a place that was not ideal but would suffice for temporary use.

The tenant testified that she was forced to take a small one bedroom apartment for her family of three. The tenant also testified that given the short amount of time left before November 01, 2016, she could not find an apartment that would take pets and she had to give away her pet dog.

The tenant moved into this temporary apartment on November 01, 2016 and later moved again to her current more suitable home. The tenant stated that the landlord had put her in danger of homelessness and that she was forced to take whatever accommodation she could find within a few days. The tenant stated that she endured a great deal of inconvenience and the additional expense of having to move twice instead of just once. The tenant also stated that she was unable to get her dog back.

The tenant has applied for the return of rent paid for November 01, 2016, but agreed that the bank had reversed the charge. The tenant is now claiming \$3,600.00 as compensation for the inconvenience and additional expense she incurred due to the landlord's actions plus \$100.00 for the recovery of the filing fee.

Analysis

Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement when they signed a contract on October 10, 2016. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In this case, pursuant to the tenancy agreement, rent is due on the first of each month. The tenant provided the landlord with a rent cheque dated October 28, 2016 for a tenancy which was due to start on November 01, 2016. The landlord agreed that she made a mistake by changing the date on the cheque and cashing the cheque.

Based on the evidence and testimony of both parties, I find that when the tenant requested the return of rent, the landlord informed the tenant that she would not allow the tenancy to start as per the tenancy agreement. Even though the landlord subsequently changed her mind and agreed to allow the tenant to rent the unit, the tenant had already looked for and found alternative accommodation, by then.

By refusing to rent to the tenant after the parties had entered into a tenancy agreement, I find that the landlord breached the tenancy agreement and section 16 of the *Act*.

I accept that the tenant had extremely limited time to find another place to move into and risked being homeless with her family that included a young child. I also accept that the tenant had to give away her pet dog to be allowed to rent the temporary accommodation that she moved into on November 01, 2016. In addition, I accept the tenant's testimony that she suffered a great deal of inconvenience and added expense when she had to move a second time to a more suitable residence, in the span of three months,

Therefore I find that the tenant is entitled to be compensated for the inconvenience, the added expense and the loss of her pet dog. In determining the amount of compensation, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Based on the testimony and evidence of both parties and my findings above, I find it appropriate to award the tenant compensation in the amount of one month's rent (\$1,800.00). Since the tenant has proven her case, I award the tenant the recovery of the filing fee (\$100.00).

Overall the tenant has established a claim of \$1,900.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,900.00**.

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: March 02, 2017

Residential Tenancy Branch

