Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, her advocate; her two witnesses; both landlords and their witness.

At the outset of the hearing, I noted that the tenant's advocate was listed as a party to this dispute. As the advocate was not a party to this tenancy I find that she cannot be named as a party to the dispute. As a result, I amend the tenant's Application to exclude the advocate as an applicant.

I also noted that in her original Application for Dispute Resolution, submitted on December 5, 2016, the tenant never identified a specific amount of her claim. However, I do not that she indicated that she wanted the return of rent for the month of October 2016 and she submitted a Monetary Order Worksheet indicating she was seeking $500.00. As a result, I accept the tenant's intention of her claim is clear.

In addition, on May 11, 2017 the tenant submitted an Amendment to an Application for Dispute Resolution seeking to increase her claim to $1,000.00. While the tenant did not indicate on the Amendment form, as she is required to do, what she intended to increase her claim for she did submit an additional Monetary Order Worksheet indicating she was seeking $500.00 for financial loss and pain and suffering.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for compensation for pain, suffering, financial loss and return of rent, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act*).

Background and Evidence

The tenant submitted a copy of an unsigned tenancy agreement naming her as the tenant and the named respondents as the landlords. The tenancy agreement stipulates the tenancy was to begin on October 1, 2016 as a 1 month fixed term tenancy that would convert to a month to month tenancy on November 1, 2016. The rent identified to be paid each month was $500.00 due on the 1st of each month with a security deposit of $250.00 to be paid.

This tenancy agreement included an attached addendum with 9 additional terms. One of the terms indicated that furnishings, appliances, beds and bedding were no longer being supplied by the landlord. The term goes on to say that the tenant's social worker will be arranging a bed for the tenant.

Additional terms address the issue of the landlord's installation of flooring in the rental unit indicating the landlord will try to complete it by October 1, 2016 and that the tenant can store her personal belongings in the rental unit prior to October 1, 2016 while some items would need to be stored in a more secure area.

Finally an additional term that indicates the landlord will provide a portable refrigerator, toaster-oven, microwave oven, television, and video player.

The tenant submitted that when she went to move into the rental unit on September 30, 2016 the unit was not ready – the floor had not been installed and there was no bed and no stove in the unit as promised.

She stated that as a result she was not able to move into the rental unit and had to stay in a shelter for several months before she could secure new rental accommodation. During this time the tenant testified that she had $180.00 stolen from her.

The tenant seeks return of rent for the month of October 2016 in the amount of $500.00. She also seeks additional compensation in the amount of $500.00 for her financial loss and for the resulting pain and suffering from the landlords' failure to have the rental unit ready for her to take occupancy.

The tenant's advocate submitted that the tenancy agreement submitted by the tenant as evidence was not received by anyone until October 14, 2015 and that the additional terms noted above did not form a part of anything agreed to by the tenant.

The landlord testified that on September 20, 2016 the parties agreed to the tenancy and that all parties were aware the rental unit was being renovated and that the landlord had promised to have it completed no later than September 30, 2016. The landlord stated also that all parties also were aware that a bed and stove were not included in the agreement.

The landlord submitted the tenant moved her belongings into the rental unit on September 23, 2016 and they did not hear anything else from the tenant or her social workers until October 3, 2016; 2 days after the tenant was supposed to move in to the rental unit advising them that she would not be moving in. The landlord submitted the rental unit was ready for the tenant on October 1, 2016 but she never showed up to get keys.

Both of the tenant's witnesses confirmed they had no direct knowledge of the tenant's agreement with the landlord and that their respective agreements did not include any furnishing.

I also acknowledge the tenant submitted several pages of her social worker's notes regarding their interactions with the tenant and the landlord during the relevant periods. While I have not reproduced any of their content in this decision, I have considered the notes as best I can. I take notice that portions of the worker's notes are redacted

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 16 of the *Act* stipulates that 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.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and

housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Based on the submissions of both parties, I find that prior to October 1, 2016 the parties entered into a tenancy agreement that was to start sometime between the date they entered into the agreement and the first day of October 2016. I accept the parties had agreed that rent would be in the amount of $500.00.

However, as the tenant disputes that some of the specific terms identified in the written but unsigned tenancy agreement were never agreed to, and in the absence of any other evidence from either party, I find the tenancy agreement submitted provides little guidance to any additional terms to the tenancy agreement.

When two parties to a dispute provide testimony recounting events during the tenancy that are equally plausible but significantly different, the party with the burden of proof must provide additional evidence to substantiate their claim.

In the case before me, the tenant claims that the rental unit was not ready for her on September 30, 2016 but the landlord submits that it was ready on October 1, 2016. The tenant submits that the unit was not ready because the flooring was not complete and because it did not have a bed or stove. The landlord submits the flooring was complete and they were not required to provide a bed or stove. The landlord also submits the tenant was never seen at the rental unit from September 23, 2016 until she removed all of her belongings.

In this case the burden rests with the tenant to provide additional evidence to corroborate her submissions. However, I find the tenant has provided no additional evidence that she did attempt to move into the rental unit on October 1, 2016 or that the parties had agreed that the rental unit included a stove and bed.

As such, I find the tenant have provided insufficient evidence to establish that the landlord has failed to comply with their obligations under Section 32 of the *Act* or the tenancy agreement to provide a rental unit suitable for occupation.

In addition, I find that had the tenant felt that the landlord had failed to provide a rental unit suitable for occupation pursuant to Section 32, she was obligated under Section 16 of the *Act* to follow the *Act* in attempting to have the landlord comply with his obligations to provide the unit pursuant to the *Act*.

From the submissions of both parties, I find there is little evidence, if any that the tenant, at any time after September 30, 2016 ever attempted to contact the landlord to have any perceived deficiencies rectified or move into the rental unit. In fact, submissions from the tenant included that after she agreed to the tenancy she had heard there had been a problem with bedbugs and that she did not want to move in to the unit.

As a result, I find the tenant has failed to establish the landlord has violated the *Act* in any manner. As a result, I find the tenant has failed to establish entitlement to the return of rent or for any compensation for financial losses or pain and suffering.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety 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 28, 2017

Residential Tenancy Branch