



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPB, MNR, MNSD, OLC, ERP, AS, FF

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and for the recovery of the filing fee. The landlord also applied to retain the deposit in partial satisfaction of her claim.

The tenant applied for an order directing the landlord to comply with the *Act*, carry out repairs and allow the tenant to have a room-mate. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Did the parties enter into a fixed term tenancy that required the tenant to move out at the end of the fixed term? Did the landlord reinstate the tenancy? Is the landlord negligent with regard to repairs and maintenance? Has the tenant breached the tenancy agreement by having a room-mate?

Background and Evidence

The tenancy started on August 01, 2016 for a fixed term of one year. A copy of the tenancy agreement was filed into evidence. In that agreement the tenant initialled the term that states that on July 31, 2017, the tenancy ends and the tenant must move out of the residential unit. The monthly rent is \$950.00 payable on the first of the month. Prior to moving in, the tenant paid a deposit of \$475.00.

The tenant testified and the landlord agreed that on June 23, 2017, the landlord sent the tenant an email regarding the end of tenancy. A copy of the email was filed into evidence.

The email was written by the property manager and informs the tenant that a new lease was being worked on and that the manager needed contact information for the tenant's room-mate. The tenant supplied the room-mate's information by email on June 26, 2017 and the property manager replied that same day confirming that a lease had been drawn up and was waiting for the tenant's signature. The property manager also asked whether the tenant would like her to send the renewed lease using "DocuSign"

On July 04, 2017, a second property manager CD who was in attendance at the hearing emailed the tenant informing her that she must move out by July 31, 2017 and reminded her that the landlord has no obligation to renew the lease because the lease was a "must move out " lease.

The tenant testified that she attempted to pay rent for August and the landlord refused to accept it. The landlord agreed that she refused to accept rent for August 2017.

On July 11, 2017 the tenant made this application for the various remedies that she has applied for. On July 24, 2017, the landlord applied for an order of possession and for a monetary order for unpaid rent.

The landlord testified that she had a new tenant ready to move in on August 01, 2017 at a higher rent of \$1,600.00. The landlord filed a copy of the tenancy agreement signed by the new tenant to support her testimony. Based on this and the fact that the tenant did not move out on July 31, 2017 or pay rent for August 2017, the landlord stated that she suffered a loss of income for the month of August. The landlord is claiming \$1,600.00 for loss of income for August from this tenant, instead of \$950.00 which is the amount of rent as stated in the tenancy agreement.

The tenant stated that the unit is a three bedroom unit located on the lower level of the home. The upper level is occupied by another tenant. Currently in the lower level rental unit there are only two occupants but at one time the tenant had a room-mate occupying the third bedroom. The tenant testified that the landlord had given her verbal approval and did not object to the presence of a room-mate. The landlord testified that she had not given the tenant permission to have a room-mate and that a room-mate was not permitted, as documented in the tenancy agreement.

The tenant testified that the flooring on the porch was old and needed to be repaired or replaced. She stated that there are holes and soft spots in the flooring. Sometime in June the tenant's foot went through the flooring resulting in a sprained ankle. The landlord agreed that the tenant had informed her about the problem and stated that she intended to take care of it after the tenant had moved out.

Analysis

Landlord's application

Section 44 (1) (b) of the *Residential Tenancy Act* states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Based on the signed tenancy agreement and the testimony of both parties, I find that the tenancy was a fixed term tenancy which was due to end on July 31, 2017 and required the tenant to vacate the rental unit on that date. However on June 23, 2017 the landlord agreed to let the tenancy continue and informed the tenant by email. The landlord followed this up with a second email on June 26, 2017, confirming that a renewal lease was done up and ready for the tenant to sign.

Based on the testimony of both parties and the emails from the landlord to the tenant which were acknowledged by the landlord, I find that the landlord cancelled the clause in the tenancy agreement that required the tenancy to end on July 31, 2017 and reinstated the tenancy.

In the absence of a second tenancy agreement and by cancelling the clause that required the tenancy to end on July 31, 2017, I find that the tenancy was reinstated on a month to month basis. Accordingly the landlord's application for an order of possession is dismissed and the tenancy will continue on a month to month basis. The tenancy will continue according to all the terms of the current agreement, other than the clause regarding the fixed term of the tenancy.

The landlord stated that the rent is not in keeping with the rental market rates and she found a tenant for the same unit who was willing to pay \$1,600.00. I find that a higher rent played a role in motivating the landlord to end this tenancy. Since I have determined that this tenancy will continue on a month to month basis, according to the terms of the current tenancy agreement, the rent will remain at \$950.00 per month. The landlord is at liberty to serve the tenant with a notice to increase rent pursuant to section 41 of the *Residential Tenancy Act*

I find that the tenant was credible when she stated that she offered to pay rent for August 2017 and that the landlord refused to accept rent. However since the tenant is occupying the rental unit, she must pay rent in the amount of \$950.00. The landlord's application for loss of income in the amount of \$1,600.00 is dismissed.

Since the landlord has not proven her case she must bear the cost of filing her application. Her claim for \$100.00 is dismissed.

Overall the landlord has established a claim for \$950.00 for rent for August 2017.

Tenant's application

Section 32 of the *Residential Tenancy Act*, states that a 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 tenant's testimony, I find that the porch is in need of repairs. The landlord agreed that she was aware of the problem and intended to fix it after the tenancy had ended. The landlord is obligated to provide a safe environment for the tenants and accordingly I order the landlord to have the porch repaired immediately to avoid injury to the tenants and/or their guests.

The landlord must have the porch repaired no later than August 31, 2017. If the landlord does not comply, the tenant may make an application for a rent reduction for the period that the porch remains in the current unsafe condition.

Based on the email from the landlord on June 23, 2017, I find that the landlord was aware that the tenant had a roommate and was asking for contact information of the room-mate. The tenant's main evidence is that the landlord has always been aware that the tenant had a roommate and has given verbal permission for the tenant to allow a roommate to occupy the third bedroom. The tenant has filed copies of the emails from the landlord asking for contact information of the room-mate to prove that such implied consent exists. However the landlord denies such permission was ever granted.

Based on the tenant's testimony and on a balance of probabilities, I find that it is more likely than not that the landlord gave the tenant verbal permission to have a roommate in the third bedroom of a three bedroom unit that was occupied by two people. Since the permission was verbal, the tenant must make a written request.

I find that the tenant has proven that implied consent exists and accordingly the tenant's request for written permission is reasonable. In the event that the landlord unreasonably refuses the tenant's request for written permission to have a room-mate occupy the third bedroom, the tenant is at liberty to file an application for dispute resolution.

Since the tenant has proven her case I award her the recovery of the filing fee of \$100.00.

The landlord has established a claim of \$950.00 and the tenant has established a claim of \$100.00 I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$850.00.

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for **\$850.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$850.00. The remainder of the landlord's application is dismissed.

The tenancy will continue on a month to month basis. Other than the move out clause the tenancy will continue according to all the terms and clauses of the existing tenancy agreement.

I order the landlord to carry out repairs to the porch by August 31, 2017.

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 18, 2017

Residential Tenancy Branch