



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, OLC, CNC

Introduction

On October 4, 2017, The Tenant applied for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the Residential *Tenancy Act* ("the Act") and for the return of the security deposit. On October 27, 2017, the Tenant amended her application to include a dispute of a 1 Month Notice To End Tenancy For Cause and to increase the amount of her monetary claim.

The Tenant and the Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties testified that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Tenant stated that she does not wish to proceed with the dispute of the 1 Month Notice To End Tenancy For Cause. She testified that she is accepting the Notice and will move out of the rental property at the end of December 2017.

The effective date of the 1 Month Notice To End Tenancy For Cause is November 30, 2017. The parties testified that rent has been paid for December 2017. The Landlord agreed to permit the Tenant to remain in the rental unit until 1:00 pm on December 31, 2017, on the condition that they receive an order of possession for the rental unit for that date.

Since the Tenant has withdrawn the dispute of the 1 Month Notice To End Tenancy for Cause dated October 2017, I find that the Tenant has accepted that the tenancy has ended. I grant the Landlord an order of possession for the rental unit effective 1:00 pm on December 31, 2017.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to other compensation under the Act or tenancy agreement?

Background and Evidence

The Tenant agreed to assume a fixed term tenancy that began on December 1, 2016, to continue until November 30, 2017. The parties agreed that the Tenant was assigned the fixed term tenancy on May 31, 2017. The parties renewed the terms of the tenancy by entering into a new fixed term tenancy that began on July 1, 2017, to continue until June 30, 2018. Rent in the amount of \$1,795.00 is required to be paid to the Landlord by the first day of each month.

With respect to the security deposit, the Tenant testified that the Landlord is holding a security deposit of \$897.50 and a pet damage deposit of \$897.50. The Tenant testified that she paid the previous Tenant the amount of \$897.50 at the request of the Landlord. She testified that the Landlord continues to hold the amount of \$897.50 from the original tenancy that began on December 1, 2016. The Tenant submitted that the Landlord should have returned the deposit to the original Tenants rather ask her to do so.

The Tenant testified that she paid the Landlord a pet damage deposit in the amount of \$897.50.

The Landlord confirmed that they are holding a security deposit of \$897.50 and a pet damage deposit of \$897.50. The Landlord testified that the Tenant changed her mind regarding having a pet at the rental property so, they required her to pay the pet damage deposit.

The Tenant is seeking compensation in the amount of \$1,150.00 which she explained is the additional amount of rent she had to pay when the Landlord refused her request to have additional roommates or co-tenants. The Tenant submitted that the Landlord unreasonably refused her permission to have roommates.

In response, the Landlord testified that the Tenant had unapproved Tenants living in the rental unit. The Landlord testified that they met the unapproved occupants and approved them as Tenants and added them to the tenancy. The Landlord submitted that these new Tenants had concerns with the Tenant and moved out. The Landlord had concerns with the Tenant wanting to continually add and remove co-tenants. The Landlord notified the Tenant that they would not approve of any additional Tenants.

The Landlord testified that the Tenant began to allow unapproved roommates to live in the rental unit. The Landlord testified that the Tenant has not suffered a loss of rent because she has continued to have roommates who are paying a portion of the rent.

The Landlord provided a copy of an email dated August 10, 2017, that states the Landlord is not interested in constant turn over and have no intentions of accepting further applications for the house.

The Landlord provided a copy of a email from the Tenant dated August 11, 2017, that indicates there are parties interested in a tenancy that she approves of, and that she has no intention of paying the rent for the other two parties share of the lease. The Landlord responded later that day informing the Tenant that a Landlord must approve any and all occupants or tenants, and that for an actual sublet all Tenants must vacate.

On September 18, 2017, the Landlord responded to the Tenants request to have two friends move into the unit by stating that anyone moving into the unit must be approved prior to moving in and cautioned the Ms. K.H. that unapproved occupants were a breach of the tenancy agreement and would result in a notice to end tenancy. The Landlord's letter states that the owner has requested that further occupants not be allowed.

The Landlord provided documentary evidence of a letter sent to the Tenant dated October 25, 2017, regarding unapproved occupants and too many pets which are breaches of the tenancy agreement.

On October 25, 2017, the Landlord issued a 1 Month Notice to End Tenancy for Cause. The Landlord submitted that the any rent received from the Tenant after this point was accepted for use and occupancy only.

The Tenant testified that she does have roommates living in the rental unit. She testified that she did not approach the Landlord to provide the names of her roommates and ask permission for them to live in the unit, because the Landlord said they would not allow more occupants.

Analysis

Residential Tenancy Branch Policy Guideline #19 Assignment and Sublet is intended to help the parties to an application understand issues that are likely to be relevant and what information or evidence is likely to assist them in supporting their position. The Guideline provides information regarding the assignment of a tenancy and subletting a tenancy.

An Assignment of a tenancy is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment.

In a sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. A landlord must not unreasonably withhold consent if the tenancy agreement is for a fixed term of six months or more.

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy

agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

Residential Tenancy Branch Policy Guideline #13 Rights and Responsibilities of Co Tenants provides:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

After considering the testimony and evidence before me, and on a balance of probabilities, I make the following findings;

I find that the tenancy was assigned to the Tenant Ms. K.H. on May 31, 2017. The Landlord's email dated June 5, 2017, states that the Landlord agrees to enter into a new lease for July 1, 2017 with only the Tenant until she finds approved roommates. I find that the Tenant entered into a fixed term tenancy agreement with a co-tenant Ms. P.S. that started July 1, 2017, to continue until June 30, 2018.

When the Tenant P.S. gave written notice to end the tenancy to the Landlord on July 28, 2017, to end the tenancy on August 31, 2017, and then moved out, she effectively ended the tenancy for all the Tenants in the tenancy agreement. I find that the Tenant P.S. moved out of the unit sometime around August 14, 2017.

I find that the Tenant, Ms. K.H. remained in the unit beyond August 31, 2017, and continued to pay the rent, and the Landlord accepted the rent. Despite the absence of a new written agreement, I find that by remaining in the unit and paying rent beyond August 31, 2017, the parties entered into a new tenancy agreement with Ms. K.H. as the only Tenant.

I find that the Landlord did not breach the Act by unreasonably withholding permission to sublet the rental property. I find that the Tenant, Ms. K.H. was not seeking to assign or sublet the tenancy; she was looking to add co-tenants to the tenancy agreement, or receive permission for roommates to live in the unit.

I find that the Landlord has the right to approve of new occupants or co-tenants living on the rental property. There is no obligation under the Act that a Landlord must consent to a request to allow more occupants or co-tenants.

Since the Landlord did not breach the Act by unreasonably withholding consent to sublet, and since the Tenant permitted unapproved occupants to move into the unit, I dismiss the Tenant's monetary claim in the amount of \$1,150.00. I find that is more likely than not that the Tenant received rental income from her unauthorized occupants. I am not satisfied that the Tenant suffered a loss, or that the Landlord is responsible for any loss.

With respect to the security deposit, I find that the Tenant's application for the return of the security deposit is premature. The Landlord has 15 days from the date they receive the Tenant's forwarding address to return the deposit or to apply for dispute resolution to keep it. The Tenant's request for the return of the security deposit and pet damage deposit is dismissed. The Tenant may reapply for the return of the deposits if the Landlord fails to apply against them or return the deposits.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was not successful with her claim, and since the Landlord was not in breach of the Act, I am not ordering the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

Conclusion

The Tenant's application for a monetary order to recover a loss of rent and for the return of the security deposit was not successful.

The Tenant has leave to reapply for the return of the security deposit if the Landlord fails to return it or apply to keep it within 15 days of receiving the Tenant's forwarding address.

I grant the Landlord an order of possession for the rental unit effective 1:00 pm on December 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: December 20, 2017

Residential Tenancy Branch