



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, the filing fee and to keep the security deposit in satisfaction of his claim. The tenant applied for a monetary order for the return of the security deposit, for the difference between his current rent and the rent for the dispute rental unit and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to keep the security deposit in partial satisfaction of his claim for loss of income and the filing fee? Is the tenant entitled to the return of the security deposit, for the difference between his current rent and the rent for the dispute rental unit and for the recovery of the filing fee?

Background and Evidence

The parties testified that on June 18, 2017, the parties entered into a fixed term tenancy agreement. The tenancy was due to start on August 01, 2017 and end on July 31, 2018. The monthly rent was \$5,000.00 and the tenant paid a security deposit of \$2,500.00.

The tenant testified that he wanted to have the flooring changed from carpet to laminate due to allergies. The landlord agreed to have it done if the tenant paid for half the cost of doing so. This agreement was verbal. When it came to the exact amount the job was going to cost, the parties provided contradictory testimony. The tenant testified that he was given to understand that the job would cost around \$2,000.00 but the landlord informed the tenant that the quote he had obtained was for \$7,000.00.

Both parties stated that the landlord called around 9:30 at night on July 25, 2017 to inform the tenant of the quote and that the telephone conversation did not go well. The tenant stated that the landlord became verbally abusive and informed him that he could take the rental unit as is if he did not want to pay for half the cost of replacing the flooring or that he could look elsewhere for a rental unit.

The tenant stated that he felt intimidated and decided not to rent the unit. In an email dated July 28, 2017, the tenant informed the landlord that he would not be moving into the rental unit. The landlord stated that he advertised the availability of the unit but was unable to find a tenant prior to December 2017.

The tenant stated that he had just three days to find another rental unit and ended up finding one that rented for \$6,000.00. The tenant is making a claim of the difference in rent of one thousand per month for a period of 12 months.

The landlord did not return the deposit and made this application on July 31, 2017.

Analysis

Landlord's application:

Section 16 of the *Residential Tenancy Act* states 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.

The parties entered into a fixed term tenancy agreement on June 18, 2017 for a tenancy that was due to start on August 01, 2017 and end on July 31, 2018. At the time the tenant signed the agreement he paid a security deposit of \$2,500.00.

Pursuant to s.16, the rights and obligations of both parties took effect on June 18, 2017, even though the tenant never moved in. Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is bound by the fixed term of the tenancy agreement and is obliged to rent the unit for the entire length of the fixed term. In this case, the tenant chose to end the tenancy prior to the end date of the fixed term. Pursuant to the tenancy agreement, the earliest the tenant could legally end the tenancy would be July 31, 2018. By ending the tenancy prior to that date, the tenant breached the tenancy agreement.

The landlord testified that he made efforts to mitigate his losses by showing the suite to prospective tenants but was not able to find a tenant for August 2017. This resulted in a loss of income to the landlord for the month of August 2017.

Residential Tenancy Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, the landlord would have been entitled to the loss of income he suffered until he found a tenant in December 2017. However, the landlord has only applied for the loss of income suffered for the month of August 2017 and I find that the landlord is entitled to his claim, in the amount of \$5,000.00. The landlord has proven his case and therefore the landlord is entitled to the filing fee of \$100.00.

Tenants' application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. In this case, the tenant informed the landlord on July 28, 2017 that he would not be moving in. The landlord filed his application to retain the deposit in a timely manner, on July 31, 2017.

The tenant stated that the landlord verbally agreed to change the flooring at a cost of \$2,000.00 but later provided a quotation of \$7,000.00. The tenant argued that the landlord had breached their verbal contract. The landlord denied having agreed to a total cost of \$2,000.00 for the replacement of the flooring. The landlord stated that he is not a contractor and therefore had obtained a quotation for the cost of replacing the flooring which turned out to be \$7,000.00.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the landlord agreed to replace flooring at a cost of \$2,000.00.

When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will likely not prevail. For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms of their verbal agreement.

The tenant has also applied for the difference between the rent at his current rental unit and the rent at the dispute rental unit. The tenant is currently paying \$1,000.00 more per month than if he had moved into the dispute rental unit. The tenant is claiming the difference in rent for a period of 12 months in the amount of \$12,000.00.

Based on the testimony of both parties, by not moving into the rental unit, the tenant breached the tenancy agreement that he had entered into. The tenant chose not to move in after he had accepted the unit with the flooring as it was at that time. In addition since the landlord did not refuse occupancy to the tenant, the landlord is not responsible for the increased cost the tenant incurred in rent at the new rental unit. Therefore the tenant's claim for \$12,000.00 is denied.

The tenant has not proven his case and must bear the cost of filing his application.

The landlord has established a claim of \$5,100.00. I order that the landlord retain the security deposit of \$2,500.00 in partial satisfaction of the claim and I grant the landlord an order under

section 67 of the *Residential Tenancy Act* for the balance due of \$2,600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit. I grant the landlord a monetary order for \$2,600.00. The tenant's application is dismissed in its entirety.

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: January 26, 2018

Residential Tenancy Branch