



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to cross-applications for dispute resolution under the *Residential Tenancy Act* (the “Act”). One party applied for a Monetary Order for damage or compensation, a Monetary Order for unpaid rent and the recovery of the filing fee paid for this application. The other party applied for the return of the security deposit and the recovery of the filing fee paid for this application.

An agent for the party who applied for compensation, E.W. and the party who applied for the return of a security deposit, Z.C., were both present for the duration of the teleconference hearing. The parties confirmed receipt of the Notice of Dispute Resolution Proceeding package and evidence from the other party regarding each application.

Both parties were affirmed to be truthful in their testimony and were provided the opportunity to present evidence and testimony, as well as cross-examine the other party.

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 Matters

Both applications listed a different name for one of the parties. This was clarified during the hearing when the agent, E.W. confirmed that she was an agent, not the person who should be named as a party to this dispute. The name of the party was amended to be the same on both applications. This amendment was made pursuant to Section 64(3)(c) of the *Residential Tenancy Act*.

Z.C.’s address on the application is not the current address where she resides. During the hearing, E.W. asked for her service address and Z.C. chose not to share the address of her residence. Z.C. confirmed during the hearing that she can receive mail, including registered mail, at the address listed on her application.

Pursuant to Section 71(1) of the *Act*, I order the address provided by Z.C. as the address to be used for service. Z.C. confirmed understanding that mail must be claimed at this address and that not claiming mail does not mean it was not served in accordance with the *Act*.

Issues to be Decided

Should a Monetary Order be issued for damage or compensation?

Should a Monetary Order be issued for unpaid rent?

Should the security deposit be retained towards compensation owing?

Should the security deposit be returned?

Background and Evidence

E.W. testified that the rental unit was shown to Z.C. on April 19, 2018 by an agent of the property. The Landlord stated that the unit was advertised for rent for \$1,650.00 plus utilities. It was confirmed over the phone with Z.C. prior to showing her the rental unit that the utilities would be \$200.00 per month for a total monthly amount of \$1,850.00. The advertisement for the unit was submitted into evidence.

During the viewing of the rental unit, E.W. stated that the agent again confirmed that monthly rent would be \$1,650.00 plus \$200.00 for utilities. After viewing the rental unit, Z.C. notified the agent of the property that she would like to rent the unit for May 1, 2018. Z.C. sent \$825.00 for the security deposit on April 21, 2018 by electronic funds transfer. The security deposit was requested by the landlord of the property to hold the unit for Z.C. as she was going away and would not be able to sign the tenancy agreement until the following week.

E.W. testified that arrangements were made to meet with Z.C. on April 25, 2018 to sign the tenancy agreement. The parties met on April 25, 2018 and E.W. stated that the rent amount was again confirmed to be \$1,650.00 plus \$200.00 for utilities. E.W. testified that it was at this time that Z.C. did not agree to sign the tenancy agreement and stated that she had been misinformed about the monthly amount that would be due once utilities were included.

E.W. provided testimony that they were clear throughout the conversations and meetings with Z.C. that monthly rent would be \$1,650.00 plus \$200.00 for utilities and that the advertisement also clarified that utilities were not included. E.W. submitted that the \$200.00 is to cover the costs of heat, electricity and hot water.

E.W. stated they believe Z.C. found a new rental unit that she preferred and that is the reason for not signing the tenancy agreement. Despite not signing a tenancy agreement, E.W. stated that the security deposit was to hold the unit while Z.C. was out of town and arrangements were

made to sign the tenancy agreement when she returned. They testified that they stopped showing the rental unit after the security deposit was paid and took the advertisements down.

After Z.C. did not sign the tenancy agreement, E.W. testified that they re-posted the advertisements to re-rent the unit for May 2018. The unit was advertised for the monthly amount of \$1,650.00 plus \$200.00 utilities. When they were not able to find a new tenant by mid-May, they reduced the monthly rent amount to \$1,650 including utilities. A tenancy agreement was signed with a new tenant for a tenancy to commence June 1, 2018.

The landlord of the property is claiming \$1,850.00 for May 2018 rent. The initial application for dispute resolution also claimed \$1,850.00 for June 2018, but as they were able to rent the unit for June 1, 2018, this amount is no longer being claimed.

Z.C. testified that she went to view the rental unit on April 19, 2018. She stated that she was not rushed during the viewing and had plenty of time to look around and talk to the agent for the property. She testified that it was at this time that the agent clarified that there was a mistake in the advertisement and the rental unit would be \$1,650.00 including utilities. Z.C. stated that she asked the agent to clarify again and he confirmed the monthly rent as \$1,650.00 including utilities.

Z.C. testified that after viewing the rental unit, she filled out a rental application and it was confirmed on April 20, 2018 that she was accepted to rent the unit. She stated that it was on this same day that an agent for the property called her and demanded payment of the security deposit. As she was going out of town, arrangements were made to send the security deposit by electronic funds transfer and sign the tenancy agreement the following week.

Z.C. confirmed that she sent \$825.00 to the agent of the property for the security deposit on April 21, 2018. A copy of the electronic funds transfer confirmation was submitted in evidence.

Z.C. testified that upon sending the security deposit, she was still under the understanding that the monthly rent would be \$1,650.00, including utilities. Z.C. met with the agent, E.W. on April 25, 2018 to sign the tenancy agreement. She stated that it was at this time that E.W. told her the rent would be \$1,650.00 plus \$200.00 for utilities.

Z.C. submitted that this was the first time she had heard the \$200.00 amount, and that she had initially thought that rent was \$1,650.00 and that she would pay utilities on her own. However, upon meeting with an agent to view the property she was told rent would be \$1,650.00 including utilities. She was not aware that the utilities would be a set amount of \$200.00 each month.

Z.C. testified that she did not back out of signing the tenancy agreement due to finding a better place, but instead due to being misinformed regarding the amount of monthly rent and utility costs. She submitted that it was on April 26, 2018 that she inquired with the landlord of another rental unit she had previously viewed as she needed a place to live.

On April 26, 2018, Z.C. served a demand letter for the return of her security deposit to the office of the agents for the property. E.W. confirmed receipt of this letter on April 26, 2018.

Z.C. has applied for the return of double her security deposit for an amount of \$1,650.00.

Analysis

Z.C. and E.W. provided conflicting testimony regarding how much the agreed upon monthly rent would be. Z.C. testified that she was told rent was \$1,650.00 including utilities, while E.W. testified that rent would be \$1,650.00 plus \$200.00 utilities. As both parties were not in agreement, I look to the evidence to determine what was likely to have occurred, on a balance of probabilities.

Both parties submitted the advertisement of the rental unit into evidence. The advertisement lists the unit for rent at \$1,650.00 plus utilities, with no mention of the amount of utilities. I find that an advertisement that states "\$1,650.00 plus utilities" is not clear that the utilities will be a set amount, and instead implies only that utilities are not included in the monthly rent.

I also look to the other evidentiary material submitted, including email and text message exchanges between the parties. I find insufficient evidence to show that the terms of the month rent and utilities amount was clarified or agreed upon between the parties.

Section 12(b) of the *Act* states that the standard terms of a tenancy agreement apply whether or not the agreement is in writing. Both parties agreed that a tenancy agreement was not signed. Instead, I look to the evidence to determine whether an oral tenancy agreement was entered into by the parties.

A tenancy agreement must include certain terms as outlined in Section 13 of the *Act*. Section 13(2)(f) of the *Act* states that the agreed terms must be outlined, and Section 13(2)(f)(iv) states that this includes 'the amount of rent payable for a specified period'.

The parties agreed with some of the terms of a tenancy, such as that the tenancy would start on May 1, 2018 and was to be for a fixed term of one year. However, the parties did not agree as to how much the monthly rent would be and whether utilities were included. As such, and without a signed tenancy agreement, I cannot determine that an oral tenancy agreement was established and that the terms of the tenancy were agreed upon.

As I determine that an oral or written tenancy agreement cannot be established, I find that I cannot award the agents for the property compensation for the loss of rent for May 2018. As no tenancy was established, in accordance with Section 6 of the *Act*, I find that I do not have jurisdiction over this matter and cannot order the return of money paid for a security deposit.

As jurisdiction has been declined, I also decline to award the recovery of the filing fee to either party. Both parties filed an application and paid the filing fee and the return of either filing fee will not be granted.

I caution both parties that the acceptance of a security deposit without a signed tenancy agreement may or may not establish that a tenancy was agreed upon. A security deposit should be accepted at the same time a tenancy agreement is signed.

Section 20(a) of the *Act* states the following:

20 A landlord must not do any of the following:

(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement

I also note that a potential tenant should not a security deposit unless the terms of the tenancy are clearly laid out in writing and the prospective tenant understands and accepts the terms.

Depending on the situation, the payment of a security deposit may be considered the start of the tenancy and a party may be held liable for any losses that a landlord experiences from a breach of the tenancy agreement, regardless of whether a written tenancy agreement was signed.

Although the *Residential Tenancy Act* does not apply to this matter, the parties may further pursue this matter through other means such as the Civil Resolution Tribunal or Small Claims Court.

Conclusion

As it was determined that a tenancy was not established, the *Residential Tenancy Act* does not apply to this matter and I decline jurisdiction.

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 5, 2018

Residential Tenancy Branch