



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Acuren Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on November 27, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that the Tenant signed a 2 month fixed term lease on January 24, 2018, and tried to cancel the signed agreement, after both parties had signed. To expand on this, the Landlord stated that she had a real estate company employed (the "agent") to help her rent the residence out. The Landlord stated that the 2 month fixed term lease was for \$8,590.00, which is comprised on \$4,295.00 per month, payable in full at the start of the tenancy. The Landlord stated that no money was ever paid to her, and on January 25, 2018, she received notification from her Agent that the Tenants no longer wanted to rent the unit. However, the Landlord stated that by this time, she had already signed and accepted the rental agreement. The Landlord stated that the tenancy agreement was all done electronically, through "DocuSign", and she was

sent the signed copy from the Tenant on the evening of January 24, 2018. The Landlord stated that she signed the tenancy agreement early on the morning of January 25, 2018, at 3:58 am (as per the documentary evidence).

The Landlord stated that she got a phone call from her Agent a few hours later (after accepting and signing the tenancy agreement) saying that the Tenants did not want to enter into the tenancy agreement anymore. The Landlord stated that she took issue with this, as the agreement was already signed by both parties.

The Landlord was able to re-rent the unit, at the same rate (\$4,295.00 per month) as of March 1, 2018, but she is also looking to be compensated for this month at the same rate from the Tenants because of the hassle this caused. The Landlord is seeking \$8,590.00 in total for the months of February and March of 2018.

The Tenant acknowledged signing the tenancy agreement on January 24, 2018, and indicated that due to a change in business requirements, her company no longer needed to rent this house. The Tenant stated that she had also planned on renting another house. However, she had to cancel both houses for the same reasons. The Tenant stated that her decision to withdraw came a couple of hours after she signed the tenancy agreement, and she notified the Landlord's agent by phone (left a voicemail) around 3pm on January 24, 2018. There was no further evidence to support the specifics of the voicemail. The Landlord stated she has no knowledge of this voicemail, and only found out about the request to withdraw from the agreement on January 25, 2018, from her agent which was several hours after the Landlord had already signed and accepted the agreement. The Landlord acknowledged getting an email from the Tenant, via her rental agent, but stated that this email indicated a different rental unit, which was not hers, and had different rental amounts and address. After some back and forth, the Landlord stated she figured out that the Tenant also wanted out of the tenancy agreement she had with the Tenant, but the Landlord argues that this information came too late.

The Tenant also stated that she emailed the Landlord's agent as a follow up, in writing, to the voicemail she left asking to cancel the agreement. This email was provided into evidence, and it indicates it was sent at 2:58 pm on January 24, 2018. The Landlord pointed out that the subject line of this email is for a different rental property. The Tenant advised that this must have been the email chain from the other property they were going to rent, but also had to cancel.

The Tenant argued that since they never made any payment in terms of security deposit or rent, there was no "consideration" for this contract. As such, the Tenant argues that without consideration, there is no enforceable contract, and they should not be obligated to pay any of the rent. The Tenant also stated that they should not have to pay for the month of March 2018, as the Landlord was able to re-rent the unit for the same price, and, at the most, they should have to pay for February 2018.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent.

First, I turn to the issue of whether or not there was a valid and enforceable tenancy agreement. I find it important to note the following definitions taken from the *Act*:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Next, I turn to the following section of the *Act*:

Start of rights and obligations under tenancy agreement

16 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.

I note these portions of the *Act* have many aspects of Common-law codified into them. I also note that a contract (tenancy agreement) must have (at a minimum) a few components for it to be binding: offer, acceptance, and consideration. In this case I find there is sufficient evidence, as per the tenancy agreement provided into evidence, that the Landlord offered the Tenant a place to occupy and rent in exchange for an agreed upon amount of money, in this case, \$4,295.00 per month for 2 months. I also find there is sufficient evidence that the Tenant accepted this offer. The Tenant's attempt to cancel this will be addressed further below.

With respect to the Landlord's signing of this agreement, I note she signed and accepted this rental agreement prior to becoming aware that the Tenant was seeking to cancel it. I note the Tenant stated she tried phoning the agent for the Landlord a few hours after she signed and

accepted the agreement. However, it appears she was unable to get through and left a voicemail.

The Tenant stated that she followed up by emailing the agent for the Landlord so that it would be in writing. However, I note this email is for a different rental address, and although the Tenant was looking to cancel both tenancy agreements (this one and the other house she rented through the agent), I find there is insufficient evidence that this was made adequately clear to the Landlord's agent. Since there is insufficient evidence that the Tenant's initial acceptance of the tenancy agreement was clearly rescinded, I find the agreement became enforceable once the Landlord accepted and signed the document, which appears to have occurred in the early hours of January 25, 2018.

I note the Tenant argues that there was no "consideration" offered to give effect this agreement but I find I do not agree. I find the Tenant's acceptance of the tenancy agreement for the specified amount equates to a promise to pay, in exchange for the rental accommodation. The tenancy agreement clearly specifies that the Tenant would pay both months' rent, up front, by the first day of the rental period. With respect to whether or not this amounts to "consideration", I note that each contracting party must exchange something of value in order for it to be a valid contract. An act or *promise* of one party must be "bought" or "bargained for" by the act or *promise* of the other. In this case, I find the Tenant's acceptance of the offer/agreement amounted to a promise to pay by the agreed upon date, and I find there is sufficient evidence that the tenancy agreement in question is legally binding and enforceable. I also note the Tenant was a business, likely with experience in engaging contracts, rather than an unsophisticated lay person.

With respect to the Tenant's request to cancel the contract, I do not find it sufficiently clear what was said on this voicemail, and I find it noteworthy that the Tenant stated she followed up with the an email to the Landlord's agent (provided into evidence) to put things in writing. However, as stated above, this email was relating to a different rental unit. Ultimately, by the time the time the Landlord became aware of the Tenant's intentions to withdraw from the agreement the following day, it was too late (the Landlord signed and accepted). I find the Tenant was legally obliged to adhere to the terms of the agreement, as laid out in section 16 of the Act.

I find the Tenant is responsible to pay the Landlord for the month of February, at a rate of \$4,295.00. However, since the Landlord was successful in re-renting the unit for March 2018, and successfully mitigated some of her loss, she did not lose out on money for March 2018. The Landlord is not entitled to enrich herself by collecting rent from two sources for this month, and I find the Landlord is only entitled to recover the amount that she would have normally received under the original agreement.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also

order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,395.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 28, 2018

Residential Tenancy Branch