



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The landlord applies for a monetary award for the cost of cleaning, drywall repair, the cost of a key fob replacement, costs related to the landlord's agent's time spent attending to a move-out inspection and for unpaid rent for March 2019.

Both parties attended the hearing, the landlord by agent, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenant fail to give proper notice to end this tenancy? Did she fail to leave the rental unit reasonably clean and free from damage but for reasonable wear and tear? Is the agent entitled to recover money for her time?

Background and Evidence

The rental unit is a three bedroom "plus den" condominium apartment. The landlord is the owner. Ms. P. works for the management company that attends to rental matters for the owner.

The tenancy started in March 2018 for a one year term to February 28, 2019. The monthly rent was \$3750.00. The tenant paid all the rent to and including the month of February 2019. The landlord received and still holds a \$1875.00 security deposit.

There is a written tenancy agreement in a form prepared by the landlord and signed by the parties in March 2018. It directs that the fixed term tenancy will end on February 28, 2019 and the tenant will vacate the rental unit.

In November 2018 the tenant contacted the landlord by email/text indicating that she wanted to move out. The landlord's agent Ms. P. wrote back telling the tenant that if she moved out before the end of February she would be responsible for rent until then unless and until the landlord located a new tenant for the rental unit. Ms. P. sent the tenant a form to fill out if she did wish to leave her tenancy early. Instead, the tenant wrote back saying she would "stay til lease end."

The tenant returned possession to the landlord on March 6, 2019. The landlord did not have a new tenant waiting to move in. The parties conducted a move out inspection and the tenant's agent attended for her.

The tenant agrees that she will be responsible for the \$294.00 cleaning charge sought by the landlord as well as the \$100.00 cost for a fob replacement. She disputes all other claims.

Ms. P. for the landlord says that the drywall was damaged where it was dented by door knobs in three places. Photos were supplied indicating small, but deep impacts through the drywall. The tenant says it is reasonable wear and tear. Ms. P. says the tenant should have informed them of the damage.

Ms. P. claims that she wasted two hours of her own time waiting around for the tenant to show up. At hearing she indicated that she did not feel strongly about this claim.

Analysis

March Rent

Ms. P. submits that the tenant was obliged to submit a formal notice in writing to end the tenancy on February 28, 2019, even though the tenancy agreement says that the tenancy ends then and that the tenant must move out then. She refers to s. 104(3) of the *Residential Tenancy Act* (the "Act"), a transitional provision that came into force December 11, 2017. It provides:

Transition — fixed term tenancy agreements

104.3 (1) If a fixed term tenancy agreement entered into before this section comes into force requires that a tenant must vacate the rental unit on a specified date, the requirement to vacate the rental unit ceases to have effect as of the date this section comes into force, except

- (a) if the tenancy agreement is a sublease agreement,
- (b) if circumstances prescribed under section 97 (2) (a.1) apply, or
- (c) if, before the day this Act receives First Reading in the Legislative Assembly,
 - (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or
 - (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

(2) For the purposes of enforcing a requirement that remains in effect under subsection (1), sections 44 and 55 continue to apply as they read immediately before this section comes into force.

On this basis Ms. P. notes that though the fixed term of this tenancy did end February 28, 2019, the requirement that the tenant move out was rendered of no effect by the amendment to the law. The tenant therefore had to give the landlord at least one month's notice to end the tenancy.

I do not consider the landlord's argument persuasive to justify requiring the tenant to pay March rent because of an insufficient notice to end the tenancy.

First, it would appear the tenant did give ample notice in writing of her intention to vacate at the end of February. In the November 2018 correspondence between the tenant and Ms. P. the tenant indicates that she would stay until the lease ended, that is, she would not stay after the lease ended.

Second, the law nullifying any clause requiring a tenant to vacate at the end of a fixed term, the law referred to in the transitional provision found is s. 104.3 above, was a law passed under the *Tenancy Statutes Amendment Act*, SBC 2017, c. 18. The relevant provision is now s. 13 of the *Act*, which provides that a landlord must prepare in writing every tenancy agreement and that the agreement must set out, among other things; whether the tenancy is a periodic tenancy or a fixed term tenancy and, if it is a fixed term tenancy then the date on which the term ends and "if the tenancy is a fixed term tenancy in circumstances prescribed under s. 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term."

The change to the law enshrined by the *Tenancy Statutes Amendment Act*, above, was to eradicate a practice that had become more common in the province whereby some landlords would engage tenants in brief fixed term tenancies under agreements that required the tenants to vacate at the end of the tenancy. This afforded landlords an

opportunity to renegotiate higher rents at the end of each fixed term than would have been permitted under the rent increase provisions of the *Act*. I should say that there is no evidence here that such was the practice of this particular landlord.

The new law only permits a move out clause if it is the landlord's intention that he, she or a close family member will move in. it nullifies any other move out clause.

What is particularly pertinent for matters in dispute in this application is that the law nullifying clauses that required a tenant to move at the end of a fixed term tenancy (except in particular circumstances not relevant here) became the law on December 11, 2017; well before this tenancy agreement was prepared and signed.

The tenancy agreement prepared by the landlord and signed by the tenant over two months later contained a provision that was contrary to law. It purported to direct that the tenant must vacate at the end of the fixed term when the law rendered such a term of no effect. It was that term that the tenant relied on to leave at the end of February without giving any further notice. She was unaware of the new law and there is no indication that the landlord brought it to her attention. In these circumstances the landlord cannot rely on the effect of the new law when it presented the tenant with a misstatement of that law in the tenancy agreement and the tenant relied on it.

Drywall Damage

I have considered the evidence and argument surround this damage and I conclude that it is damage consonant with reasonable wear and tear and not the tenant's responsibility. The apartment has been set up or constructed in such a manner that an interior door is free to swing open until the doorknob contacts the wall behind it. There are no stoppers or other restraints to prevent that contact.

In my view the damage indicated in the photos was bound to happen and is reasonable wear and tear.

Ms. P.'s Wasted Time

In my view the tenant's agreement is with the landlord and not Ms. P. and there is no evidence that the landlord suffered any loss or damage as the result of the tenant's alleged tardiness. If Ms. P. had charged the landlord for the extra time then perhaps the

landlord would have reason to claim against the tenant but that has not been shown to be the case here. I dismiss this item of the claim.

Conclusion

The landlord is entitled to a monetary award totalling \$394.00. Given the landlord's limited success in this matter I award recover of \$50.00 of the filing fee for a total of \$444.00. I authorize the landlord to retain that amount from the \$1875.00 security deposit being held.

The tenant will have a monetary order against the landlord for the \$1431.00 remainder of the deposit money.

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: June 18, 2019

Residential Tenancy Branch