



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

The tenant filed an Application for Dispute Resolution on May 6, 2021 seeking compensation for monetary loss or other money owed. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 4, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other in advance.

Issue to be Decided

Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement in the evidence. The fixed, six-month tenancy began on August 1, 2019, and was scheduled to end on January 31, 2020. The tenancy continued on a month-to-month basis after that. The tenant paid a monthly rent amount of \$1,585 at the start of each month. The tenant paid a security deposit of \$792.50.

Both parties agree the tenancy agreement ended when the tenant provided notice to the landlord on February 8, 2021. The copy of this note in the tenant's evidence reads: "I would like to let you know that we are moving out. . . Moving date: 30 March 2021."

The tenant delivered this note in person to the property manager who did not attend the hearing. The tenant indicated March 30, 2021 on the note, only to indicate a date beyond one month, so that they would not forfeit any amount of their deposit for this short notice. They explained to the landlord that, as of March 1st, they would be paying two different amounts of rent at two different places, having secured a new living arrangement elsewhere for March 1st.

According to the tenant, the landlord suggested the tenant could indicate the end of February as the end-of-tenancy date. This was on the condition that the tenant find new tenants as replacements. The tenant then made the effort of finding new tenants. Over 55 people had contact with the tenant, and "more than 10 people visited." The tenant provided evidence of the communication and postings they made in these efforts.

One prospective tenant was interested and wanted the form to complete the new tenancy application process. The tenant referred this person to the landlord, and the landlord said, "perfect fine great". After this, the tenant still had many other inquiries, but refused these other prospective tenants.

On February 28th – which was the tenant's final day – the landlord informed the tenant that they did not find replacement tenants. The tenant here moved on February 28, and with their new abode only available after 6pm, they stayed late to clean the rental unit.

The following day, on March 1st the tenant was surprised to learn that their rent to pay at their new abode was not available. The landlord here did not cancel the March 2021 rent withdrawal, and thus the tenant had paid for March 2021 even though they moved out the day prior. They were not informed that the prospective tenant did not apply.

The tenant sent a written request to the landlord on March 24, 2021. As it appears in the tenant's evidence, it sets out the following *verbatim*:

- I gave notice on February 8th that I will move out on February 28 from [the rental unit].
- I never agreed to pay the rent for March and move out on February 28.
- If I had known that [the landlord] would withdraw my money for March too, I would have stayed there during March as well (as this was my original plan

before having spoke to the manager and being persuaded to change the move-out date).

- If [the landlord was] going to withdraw the rent for March because I have late notice, the procedure is that they file a claim for compensation for loss of rent.
- Instead of filing for this claim, [the landlord] unlawfully withdrew funds for the March rent from my account without obtaining the appropriate permission to do so or making a claim to do so.

The tenant here claims for that single month's amount of rent, for \$1,585.

In the hearing, the landlord referred to the tenant's notice dated February 8th. This only shows the date of March 30 as the end-of-tenancy date. The property manager reported to the landlord who attended the hearing; they informed that the prospective tenants did not call back to follow-up on the application process. The landlord here maintained that it was the tenant's responsibility to clearly understand the status of finding prospective tenants. As set out in the landlord's written synopsis: "The Resident Manager never told the tenant that the suite was rented to someone else so the fact that [the tenant] may have assumed that is unfortunate."

The landlord provided a set of emails between the tenant and property manager:

- On March 22 the tenant stated: "We found a tenant and you did not inform us you would charge us for the month of March 2021."
- On March 23 the property manager responded: "You did bring 2 people on my door as a potential tenant but they never fill up an application or call back. And they never said they are going to take an apartment."

In the hearing, the tenant responded to this to state they thought the landlord did in fact make the change to their end-of-tenancy notice of February 8th.

Analysis

In this situation, the tenant gave their notice to the landlord that they wished to end the tenancy. By s. 44 of the *Act*, the tenant may give notice to end the tenancy in accordance with s. 45, or the landlord and tenant agree in writing to end the tenancy. The following s. 45 sets out that a tenant may end a periodic tenancy by giving the landlord notice effective on a date that: is not earlier than one month after the notice; and is day before the day in the month that rent is payable.

Here, on February 8 the tenant advised the landlord of the end-of-tenancy date of March 30, 2021. There is no written record to show that this date changed. I find there was no mutual agreement in writing to show the March 30 end date changed. Also, there is no evidence of an edit to what was written by the tenant, either edited and thereby authorized by the landlord, nor unilaterally by the tenant as proof of a discussion.

Informally, with the property manager, the arrangement was in place with the tenant whereby they could leave earlier if new tenants were in place. I find the tenant's commitment to this agreement did not end with the referral to the landlord. I find it reasonable that the tenant was responsible for knowing with surety that a new arrangement was in place for the following month. There was no obligation automatically on the landlord to stop the March rent payment for this reason. The tenant, as the one ultimately benefitting from this arrangement, was the one responsible for ensuring the matter was finalized. I find this was a courtesy offer from the landlord, requiring work on the part of the tenant. I acknowledge the tenant undertook significant work to secure new tenants; however, they did not follow through to ensure a future arrangement was finalized. I find they had a vested interest in this important matter; however, they did not check on the status, and this ultimately cost the landlord.

The tenant was free to vacate whenever they wished after giving notice to the landlord; however, that does not alleviate the obligation to pay rent as set out in the tenancy agreement. I find the landlord did not consent to a rent-free month; there is nothing in the evidence to show they did. The tenant is also bound by s. 44 or s. 45 of the *Act* to end the tenancy is a legal way.

I find there was no violation of the *Act* by the landlord in this situation. As such, I make no award for the one-month rent amount to the tenant. I therefore dismiss the tenant's Application, without leave to reapply.

Conclusion

For the reasons above, I dismiss the tenant's Application for monetary compensation, without leave to reapply

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 8, 2021