



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on August 16, 2021 in accordance with Section 89 and that the service was witnessed by a third party. The tenant submitted a handwritten statement from her witness confirming this service.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

The tenant clarified in the hearing that she was only seeking return of her rent and did not seek to cancel a notice to end tenancy. As such, I amend the tenant's Application to exclude the issue of the notice to end tenancy.

I also note that the tenant had listed the landlord as both a tenant and a landlord, in error. As the respondent named on this application took on the role of landlord, I find the respondent should only be named as the landlord and not both landlord and tenant; I have amended the application to reflect this change.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent, pursuant to Sections 12, 14, 16, 67, and 72 of the *Act*.

Background and Evidence

The tenant testified that on July 4, 2021 the parties reached a verbal agreement on the terms of a tenancy that was set to begin on August 1, 2021 on a month-to-month basis for a monthly rent of \$630.00 due on the first day of each month with a security deposit of \$150.00 paid. The tenant stated the landlord never provided a written tenancy agreement.

The tenant further testified that on July 26 the landlord contacted her and asked her to pay the security deposit and rent ahead of the August 1, 2021 due date, which she did by electronic transfer.

On July 28, 2021 the tenant met with the landlord to pick up the keys to the rental unit. The tenant testified that it was at this time that the landlord changed some of the terms of the tenancy agreement. Specifically, the following was changed:

- Originally, it had been agreed that only women would be renting the rental unit; but the landlord stated on July 28, 2021 that her boyfriend would be staying over 2 nights per week and the tenant would be required to either leave the rental unit or lock herself in her room when he stayed over;
- Originally, it had been agreed that the unit would be no smoking; but on July 28, 2021 the landlord informed the tenant that the landlord would smoke on the balcony which was directly outside of the tenant's bedroom window; and
- Originally there had been no mention of any restrictions for using common areas such as the kitchen or other shared rooms. However, on July 28, 2021 the landlord told the tenant that she could not use the shared rooms beyond 10:00 p.m. and that she could not cook past 8:00 p.m.

The tenant submitted in the hearing that she then told the landlord that she could not move in under these changed terms but that the landlord could keep her security deposit and requested the return of her rent money. The tenant testified that the landlord agreed that she would be returning the rent money within 2 weeks. However, the tenant has not received the rent back as of the date of this hearing.

Analysis

Section 13 of the *Act* requires a landlord to prepare a tenancy agreement in writing and include for specific terms, including the correct names of the landlord and tenant; the address of the rental unit; when it was entered into; and other standard terms. Section 12 states that the standard terms are terms of every tenancy agreement, whether or not the tenancy agreement is in writing.

Section 14 of the *Act* stipulates that a tenancy agreement cannot not be amended to change or remove a standard term but does allow for a tenancy agreement to be amended to add, remove or change a term, other than a standard term, only if both the landlord and the tenant agree on the amendment.

Section 16 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.

I accept the tenant's undisputed testimony that the parties entered into a tenancy agreement on July 4, 2021 for a tenancy to begin on August 1, 2021. I also find, based on the tenant's testimony and evidence, that the landlord unilaterally changed the terms of the tenancy agreement prior to the tenant moving into the rental unit.

Section 6 of the Act states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or regulations; the term is unconscionable or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Residential Tenancy Policy Guideline 8 identifies a test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

Section 27 states a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

I find that the terms of restricting accesses to common areas after either 8:00 or 10:00 p.m. are contrary to the landlord's obligations outlined in section 27 and that the term the landlord sought to impose upon the tenant after the agreement was made that required the tenant to basically not be in the rental unit or lock herself into because of the landlord's boyfriend was an unconscionable term.

I also find that these additional clauses the landlord sought to unilaterally change significantly altered the terms of the originally agreed upon terms of tenancy. As such, I find the tenant was not bound to pay the landlord any rent monies. As a result, I find the tenant is entitled to return of the rent paid.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$630.00** rent owed. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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 29, 2021

Residential Tenancy Branch