



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with the tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. The tenant testified that he served the notice of hearing and Application for Dispute Resolution upon the landlord and the landlord's agent by registered mail. The person identified as the landlord's agent by the tenants (herein referred to as the agent) appeared at the hearing. The landlord did not appear at the hearing. A search of the registered mail tracking number provided by the tenant showed that the landlord received the tenants' hearing package. I was satisfied that the landlord was adequately served with the notice of hearing and proceeded without the landlord present. Both parties in attendance at the hearing had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

1. Whether the person identified as an agent is an agent of the owner of the rental unit and a "landlord" under the Act.
2. Whether the tenants are entitled to receive compensation from the landlord with respect to the landlord breaching the tenancy agreement and, if so, the appropriate amount of compensation.
3. Award of the filing fee.

Background and Evidence

The parties were in agreement to the following relevant facts. A tenancy agreement was executed on August 11, 2008. The tenancy agreement provided that the tenants would obtain possession of the rental unit on September 20, 2008 for a fixed term of 1 year and 10 days. The monthly rent agreed upon by the parties was \$1,550.00. The tenants provided cheques to the landlord for the security deposit, move-in fee charged by the strata council, and 12 post-dated rent cheques. The landlord did not cash the cheques and on August 20, 2008 the tenants were notified in writing by the agent that the landlord would not be moving out of the rental unit.

The tenant testified that alternative rental accommodation was found in the same block as the rental unit and is of similar finishing quality; however, the alternative accommodation is smaller in size, does not have a balcony, does not have a storage locker, and has a smaller gym than that which was to be provided with the landlord's rental unit. The tenant testified that the monthly rent for the alternative accommodation is also \$1,550.00. The tenant has placed a value of \$100.00 per month on the amenities not included in the alternative rental accommodation and when multiplied by the length of the fixed term, is seeking \$1,200.00 in damages or loss from the landlord for breaching the tenancy agreement. The value of \$100.00 per month represents the difference between the amount of rent the landlord was initially seeking for the rental unit and the amount of rent agreed upon by the parties.

The agent expressed reservation that he was an agent for the landlord. The agent explained that the landlord barely speaks any English and he was approached by the landlord to help her find tenants for the rental unit since the landlord was leaving for China. Both the tenant and the agent in attendance at the hearing provided consistent testimony that it was the landlord, as opposed to the agent, that negotiated and approved the material terms of the tenancy agreement such as possession date and the amount of rent. In addition, the cheques provided by the tenants for the security deposit and rent were made out to the landlord and not the agent. Although the agent signed

the tenancy agreement, the name of the landlord identified in the signature area of the tenancy agreement is that of the landlord and the agent's signature indicates that it is on the behalf of the landlord.

On or about August 20, 2008, the landlord informed the agent that she was having difficulty with her Visa and would not be leaving for China or moving out of the rental unit. The agent promptly contacted the tenants and arranged to have their cheques returned to them. The agent knows of the building where the tenants obtained alternative accommodation and did not dispute the tenant's testimony concerning the amenities the tenants obtained for the same rent.

Although the tenant and agent agreed on the facts concerning the tenancy agreement, the parties were of differing opinions with respect to finding alternative rental accommodation. The agent submitted that there were thousands of rental units offered for rent on Craigslist; however, the tenant submitted that he lost a crucial week of looking for a rental unit that would accept two cats and the available rental pool was much more limited after August 20, 2008. The agent stated that he provided the tenants with a name of a person who may have been able to help the tenants locate an alternative rental unit; however, the tenants had viewed two other units and had already signed a tenancy agreement for a different unit.

Documentary evidence provided for the hearing included the tenancy agreement signed by the tenants and the agent on behalf of the landlord and the exchange of emails concerning the termination of the tenancy agreement and the return of the cheques provided by the tenants to the landlord.

Analysis

I have considered whether the person named as the agent by the tenants is an agent for the owner and/or a landlord. The definition of landlord, as provided in section 1 of

the Act, includes an owner, the owner's agent, or another person who permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement.

Residential Tenancy Policy Guideline 26: *Agents* provides that a person may be an agent where:

- The owner is clearly named in the agreement but the agreement is signed on behalf of that owner by the other person named as agent. The agent may collect the rent and attend to repairs. [my emphasis added]

Upon review of the tenancy agreement and the testimony of the parties, I find insufficient evidence that the person named by the tenants as an agent is actually an agent of the owner. I note that the tenancy agreement does not name the agent as an agent of the owner and there is little indication that the agent would exercise powers or performs duties required of a landlord under the Act or tenancy agreement such as collecting rent or making repairs. I find it more likely than not that the agent was assisting the landlord by finding her tenants and filling out the necessary paperwork; however, those activities are not sufficient to conclude that the assistant is an agent of the owner. Therefore, the named landlord for this decision and accompanying Monetary Order is amended to reflect the name of the landlord of the rental unit only, and not the person identified as an agent by the tenants.

A tenancy agreement is an agreement between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities. Section 16 of the Act provides 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. Upon review of the tenancy agreement provided as evidence, I find that there was a valid tenancy agreement between the parties and that effective August 11, 2008 the tenants had secured a right to take possession of the rental unit starting on September 20, 2008. Similarly, the

landlord had a legal obligation to give possession of the rental unit to the tenants on September 20, 2008.

Section 7 of the Act provides that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Since the landlord did not provide possession of the rental unit, as agreed upon, the landlord breached the terms of the tenancy agreement. I do not find that the tenants did anything to extinguish their right to possession of the rental unit and the landlord's personal reasons for not fulfilling the terms of the tenancy agreement are really irrelevant to finding the landlord breached the tenancy agreement. Therefore, the landlord is liable to compensate the tenants for the damage or loss they incurred for the landlord not fulfilling the landlord's obligations as per the agreed upon terms of the tenancy agreement.

From the testimony of the parties, I am satisfied that the tenants took reasonable steps to minimize their damage or loss by locating alternative rental accommodation in the same geographic location as the rental unit in a building of similar age and in a rental unit of similar quality finishing as soon as possible after learning of the landlord's intention to not complete the terms of the tenancy agreement. However, it is undisputed that the alternate rental unit is inferior to the rental unit in that the tenants do not have a storage locker, do not have a balcony, the unit is smaller and the building's gym is smaller and less equipped. Therefore, I find the tenants have succeeded in demonstrating the value of the services and facilities and features of the rental unit the tenants lost because of the landlord's breach of the tenancy agreement is approximately \$100.00 per month and that over the length of the fixed term of 1 year, the tenants have suffered a loss equivalent to \$1,200.00.

Based on the above findings, I award the tenants damages or loss of \$1,200.00 for the landlord's breach of the tenancy agreement. As the tenants were successful with this

application, I also award the tenants the \$50.00 filing fee. Provided for the tenants with this decision is a Monetary Order in the total amount of \$1,250.00.

The tenants must serve the Monetary Order upon the landlord and may enforce it in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenants were successful with their application and are awarded a Monetary Order of \$1,250.00.

October 23, 2008

Date of Decision