



Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: MNDC, MNSD, RPP

Introduction

This was the hearing of two applications by the tenant for a Monetary Order for the return of a security deposit and for the return of personal property. The hearing was conducted by conference call. The tenant did not attend; he was represented by his agent. The landlord was represented by her agent.

Background and evidence

The tenancy began March 20, 2009 for a fixed term ending April 1, 2009 with rent in the amount of \$2,100.00 due in advance on the first day of each month. The tenant paid a security deposit of \$1,050.00 on March 20, 2009.

According to a written statement from the tenant on March 20, 2009 he paid the respondent, who is the landlord's agent, the sum of \$700.00 as rent for the balance of March and the sum of \$1,050.00 as a security deposit. According to the tenant's statement on March 22, 2009 he told the landlord's agent that the fridge in the rental unit was not working. He said in his statement that he telephoned the landlord's agent on April 1, 2009 and asked her to pick up the rent for April. He said that she came on April 3, 2009 and he paid her \$2,100.00 rent for the month of April. On April 8, 2009, according to the tenant's statement he told the landlord's agent that he had to leave the rental unit before the end of the lease.

According to the landlord's statement no rent was paid for the month of April. She received an e-mail and a phone call from the tenant and his agent informing her that the tenant had a family emergency and was returning to Saudi Arabia. In her statement the respondent said that the tenant told her he would be leaving on April 26, 2009. She told

the tenant that she would accept the early termination and would try to rent the unit for May 1st but she would need access to the unit to show it to other potential tenants and the tenant agreed.

The respondent showed the unit to prospective tenants in mid April; she found the unit in an awful, smelly and dirty condition. The tenants had smoked in the unit despite it being a non-smoking unit. In an e-mail to the landlord dated April 16, 2009 the tenant's agent said:

I am trying my best to work with you and the tenants to reach a situation that will put everybody in a better position than the current. (Name of tenant) knows that he has to pay for his fault and he offered the following:

- 1 – Clean the place professionally
- 2 – Be available when you call him
- 3 – Be ready to leave the place if you are showing
- 4 – Give up the damage deposit

The respondent stated that on April 25th she was told by the tenant and his agent that he was leaving on a plane flight on April 26, 2009, but when she attended at the rental property on April 26, 2009 the tenant had not moved out and had not cleaned the unit. In her statement the landlord said that she was then informed by the tenant's agent that the tenant had changed his mind; he was not moving out and he had found two more persons to move in with him. The landlord said that did not agree; she had already found a new tenant and entered into a new one year lease to commence May 1, 2009 and she said the tenants did not have permission to sublet.

On April 27, 2009 the landlord attended at the rental property. The concierge told her that one of the tenants had left the building carrying suitcases the previous day. The door to the rental unit was locked and there was no answer. The respondent entered the unit with the assistance of a locksmith. In the unit was a lap top (computer) an empty suitcase. Two pairs of shoes some clothes (underwear and sweatshirt) and a few books. The landlord bagged these items and left them at the concierge's desk. The landlord then attended to arrangements to clean the rental unit. She did not hear

anything from the tenant until April 29, 2009 when the tenant and his agent came to her place of work and requested money for their hotel room and food.

The tenant claimed payment of the sum of \$1,058.14 plus the return of his security deposit. The tenant claimed for hotel accommodation, meals a mobile charger and \$500.00 for "Interpretation and counseling services" provided by the agent who represented the tenant at this hearing. The tenant requested the return of personal property and claimed the additional sum of \$100.00 for a missing computer desk, a screwdriver and toiletries. According to the tenant's written submission he attended the rental unit on April 27, 2009 at 2:00 P.M. but could not gain access.

Analysis and Conclusion

The tenant said in his submission that he paid rent for the month of April. The landlord denied that rent was paid for April. The tenant did not provide any documentary evidence to show that a payment was made. I find that the tenant has failed to prove on a balance of probabilities that he paid rent for April.

The tenant stated that he advised the landlord on April 8, 2009 that he had to leave the rental unit before the end of the lease. The landlord stated that the tenant told her that he was leaving the country on April 26, 2009. I find that the landlord accepted the tenant's notice and on the strength of the notice re-rented the unit in fulfillment of the landlord's obligation to mitigate her damages. The tenant, having given the notice and caused the landlord to act on it was not at liberty to change his position thereafter or to attempt to sublet the unit when the landlord had already entered into a new and binding tenancy agreement.

I find that the landlord was entitled to conclude after she was advised on April 27, 2009 that one of the tenants had left the rental unit with two suitcases and after she inspected the unit and found only a few items left, that the tenants had abandoned the rental unit. I find that the tenant advised the landlord that he was vacating the rental unit on April 26, 2009. His proposal to sublet or continue the tenancy put forward on August 26 2009 was rejected. In light of his conduct and representations to the landlord I find that he

does not have a legitimate ground for claiming hotel and other expenses from the landlord from and after April 27, 2009; this claim is dismissed without leave to reapply.

I find that the e-mail from the tenant's agent wherein he said that the tenant knows that he has to pay for his fault and offered to "Give up the damage deposit" was confirmation that the tenant agreed that the landlord could retain the deposit to pay a liability or obligation of the tenant as provided by section 38 (4) (a) of the *Residential Tenancy Act*. The tenant's application for return of his security deposit is therefore dismissed without leave to reapply.

I was not provided with any evidence to suggest that the tenant was not able to retrieve the belongings he left in the rental unit and I was not provided with evidence to support his claim for a monetary award for a computer desk, screwdriver or toiletries; these claims are dismissed without leave to reapply. There is no basis for the tenant's claim for interpretation and counseling services and this is not an allowable cost that could be claimed pursuant to the *Residential Tenancy Act* in any event. This claim is dismissed without leave to reapply. The tenant has been unsuccessful on both of his applications consequently I make no award with respect to the filing fees for these applications.

Dated September 17, 2009.