



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and one landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlord provided documentary evidence to the tenant however the tenant did not provide her documentary evidence to the landlord. Therefore the tenants documentary evidence has not been considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testifies that this tenancy was due to start on September 01, 2012. The tenant testifies that she paid a security deposit and a pet deposit to the landlord on July 30, 2012 and the landlord marked the receipt for this stating on the receipt that this was for a rental for September 01, 2012. The tenant testifies that the landlord also filled in

his details and signed a shelter information document so the tenant could get assistance with the rent. The tenant testifies that the rent was agreed at \$780.00 per month. The tenant testifies that when she first spoke to the landlord about the unit the landlord said the unit was available immediately. The tenant testifies she told the landlord ML that she could not move in until September 01, 2012 and states the landlord ML said he would hold the unit for her if she paid the security deposit.

The tenant testifies that she then made arrangements to have Shaw cable installed; she organised rental insurance, booked a moving company and changed her mailing address all ready for a move on September 01, 2012.

The tenant testifies that on August 16, 2012 the landlord ML called the tenant to inform the tenant that the unit had been rented to another person on August 15, 2012. The tenant testifies that the landlord did return her security and pet deposit of \$500.00 however the tenant states she had to take the afternoon off work to collect this from the landlord.

The tenant testifies that she also had to take another day off work to deal with filing her application. The tenant testifies she lost \$150.00 for the work she was supposed to do on August 16, 2012 and \$200.00 for the lost days work. The tenant states she has not provided any documentation on this lost work as she is a cleaner and this is the amount the cleaner who had to do her work was paid for these three jobs.

The tenant seeks to recover the sum of \$500.00 for her moving costs. The tenant states she has not provided a receipt from a moving company for this work. The tenant seeks to recover the sum of \$150.00 for a month's storage of her belongings as she could not find alternative accommodation for the first month and had to store her belongings at a friend's storage basement. The tenant also seeks to recover the sum of \$6.50 for her change of mailing address.

The landlord AL testifies that she has never met the tenant. AL testifies that her husband rented the unit to the tenant with the proviso that it couldn't be rented out sooner. The landlord AL testifies that her husband called the tenant and said she could have the unit sooner however they later found out the tenant was not allowed back in the building after the tenant had a previous tenancy there under the old landlord and the tenant had neglected to inform the landlord of this. Because of this the landlords sent the tenant a trespassing letter.

Analysis

I have carefully considered the testimony of both parties; I refer the landlord to s.1 of the *Residential Tenancy Act* which gives definitions of the term Tenancy Agreement.

Tenancy Agreement - *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.*

By agreeing that the tenant could rent the unit and accepting a security and pet deposit from the tenant marking the receipt for rental for September 01, 2012 I find this is an expressed oral agreement for the tenant to rent this unit starting September 01, 2012.

When a tenancy agreement has been entered into the terms of that agreement cannot be altered by either party without the permission of both parties. Therefore the landlord should have asked the tenants permission to mutual end the agreement by signing a mutual agreement to end tenancy document.

Even if the tenant did have a ban from the previous landlord from entering the building the landlord has provided no evidence that this ban was court ordered and would continue to apply to future landlords.

Therefore I find the tenant is entitled to some compensation from the landlords because they broke the tenancy agreement before the tenant moved in and as the result the tenant suffered some loss.

However a person making a claim, in this case the tenant, is required to provide evidence as to the actual amount required to compensate the tenant for the losses that were incurred such as moving costs, storage costs, change of address and lost wages. The tenant did not serve the landlord with her documentary evidence therefore I cannot consider that evidence at this time and the evidence contained little corroborating evidence to support the tenants claim for a monetary award. However I find it is likely the tenant did suffer a financial loss due to the landlords' actions in contravention of the *Act*. But I am not satisfied that the tenants claim for lost wages could be considered as the tenant has no evidence to show that she was due to work on the days in question and no evidence to show lost earnings.

Therefore I will consider "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

It is therefore my decision that the tenant is entitled to nominal damages to an amount of \$250.00 for compensation for moving, storage and mail redirection.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$250.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants claim is dismissed without leave to reapply.

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 02, 2012.

Residential Tenancy Branch