Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC, MNR, MNSD, FF
Tenant: MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order for moving and storage costs; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act.*

Background and Evidence

The parties agreed that in December 2014 they reached a verbal agreement for a month to month tenancy that was due to begin on January 15, 2015 for a monthly rent of $1,200.00 due on the 1st of each month with a security deposit of $450.00 paid. The parties both acknowledged that at the time the agreement was made the rental unit was being renovated. The landlord assured the tenant that the renovations would be complete by the start date of the tenancy.

The landlord submitted that between the time they entered into the agreement and the start date of January 15, 2015 the tenant contacted her and asked for the start date to be changed to **January 31, 2015**. The tenant submitted that it was the landlord who contacted her and told her that the renovations would not be complete by January 15, 2015 and that the move in date was changed to **January 29, 2015**. She testified that she was not given any choice but rather was simply told that the move in date would change. The parties agreed that landlord allowed the tenant to move in some of her belongings into one bedroom in which the renovations had been completed prior to the start date of the tenancy.

The landlord testified that on January 28, 2015 she confirmed with the tenant that the unit would be ready by noon on January 31, 2015. The landlord also stated that due to a back order for the kitchen counter she advised the tenant, about a week prior to the start date of the tenancy, that the counter would be installed 2 or 3 days after the start of the tenancy but that a temporary counter and sink would be installed for the start of the tenancy. The tenant did not dispute that she was so informed, but she did not understand how the landlord could set up a temporary counter with an operating sink.

The tenant submitted that she had been told by the landlord that the rental unit would be available for January 29, 2015. She stated that when the landlord's contractor advised her that the unit would not be available until January 31, 2015 she decided that she could not rely upon the landlord's promise that the renovations would be completed by January 31, 2015, so advised the landlord verbally that she would not be moving in and she moved her belongings out.

The parties agreed that from the time the tenant verbally informed the landlord that she would not be moving in but before the tenant removed her belongings the landlord had changed the locks on the rental unit. The tenant testified that she had text messages from the landlord's contractor to confirm that it was the landlord who changed the date from January 29, 2015 to January 31, 2015. However, the tenant did not submit these into evidence.

The tenant confirmed that she did not provide a written notice to end the tenancy because the tenancy agreement was verbal she did not feel it was necessary. She provided, in her evidence, a copy of a letter written by her dated February 5, 2015 giving an explanation of why she did not move into the rental unit, providing her forwarding address, and asking for the return of her security deposit. The tenant testified that she send this letter by registered mail. The landlord did not dispute receiving this letter but did not indicate when she received it.

The landlord seeks as compensation rent for the months of February and March 2015 due to the late notice to end tenancy provided by the tenant. The tenant seeks return of her security deposit and compensation for the costs she incurred as a result of not being able to move into the rental unit including:

Description	Amount
Storage – February 2015	$103.20
Storage – March 2015	$84.00
Hotel – January 31, 2015	$70.63
Moving costs	$384.90
Total	$642.73

Analysis

Section 16 of the *Act* stipulates 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.

As the parties reached their tenancy agreement, albeit it verbally, in December 2014 I find that pursuant to Section 16 of the *Act* they were both bound to all of their obligations under the *Act*.

When both parties provide testimony that explains certain events in two different but equally plausible ways the burden rests with the party making the claim to provide sufficient additional evidence to corroborate their position. In this case, I find that neither party has provided any additional evidence that would confirm why or to which date the start of the tenancy was changed.

As such, I find that despite the reason given by both parties as to why the move in date was change, neither party indicated until the tenant moved her belongings out that either party had a problem with the changed date. Therefore, I find that both parties did agree that the start date would change.

Again, in regard to which date the parties agreed to, I find that since the parties have no additional evidence submitted that could confirm that the start date was originally changed to January 29, 2015 and then to January 31, 2015 or that it was originally changed to January 31, 2015 I cannot determine the actual start date of the tenancy.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

While I find that the actual agreed upon start date of the tenancy is important to determine whether or not the landlord complied with Section 32(1) to provide a residential property that complied with health, safety and housing standards required by law; I find the outcome of these claims rests with the tenant's response to her determination that the landlord could not comply with having the rental unit ready by the move in date.

That is to say that whether the parties agreed to January 29, 2015 or January 31, 2015 as the start date of the tenancy the tenant was required to comply with her obligations outlined in Section 45 of the *Act* if she wanted to end the tenancy.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

A tenant's notice to end tenancy must comply with the requirements set out in Section 52 of the *Act*. This section states that in order to be effective a notice must be in writing and must be signed by the tenant; give the address of the rental unit; and state the effective date of the notice.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

I accept that the provision of the residential property that complies with Section 32(1) is a material term of any tenancy and as such, I find that if the tenant felt the landlord was not going to be able to provide the rental unit for the start date of the tenancy, whether that was January 29, 2015 or January 31, 2015 the tenant was obligated to follow the requirements under Section 45(3) to end the tenancy.

As there is no evidence before me that the tenant provided the landlord with a written notice of a breach of a material term of the tenancy agreement or that the tenant provided the landlord with any time to correct the situation, I find the tenant cannot rely on Section 45(3) to end the tenancy.

As such, in order for the tenant to end the tenancy under Section 45(1) the tenant was required to provide the landlord with a **written** notice. While the tenant did not provide the landlord with a written notice, I find that the landlord was made aware of the tenant's intentions prior to the start of February 2015 and was therefore sufficiently aware that the tenancy would not be continuing into March 2015.

Based on the above, I find the landlord is entitled to compensation for rent for the month of February 2015 but not for the month of March 2015.

As to the tenant's claim for the costs of storage; moving; and hotel costs, I find that since the tenant failed to end the tenancy without giving the landlord written notification of breach of a material term and providing the landlord with any time to correct such a breach the tenant, in essence, the tenant simply chose to end the tenancy. Therefore I find the tenant cannot hold the landlord responsible for any costs that the tenant may have incurred as a result of her choice. I dismiss her claim for these items.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the undisputed testimony of the tenant that she provided the landlord with her forwarding address by registered mail on February 5, 2015 I find, allowing 5 days for delivery of registered mail, that the landlord would have received the tenants forwarding address by February 10, 2015. As such, to be compliant with Section 38(1) the landlord was required to file her Application for Dispute Resolution to claim against the deposit no later than February 25, 2015.

The landlord's Application for Dispute Resolution was received by the Residential Tenancy Branch on May 27, 2015 or 91 days after she received the tenant's forwarding address. I therefore I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the deposit paid.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order to the landlord in the amount of **$300.00** comprised of $1,200.00 rent owed less $900.00 the tenant is entitled to for double the amount of the security deposit.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were at least partially successful in their respective claims I find they would both be entitled to ½ of their respective filling fees and as such, they would each cancel each other out. I therefore, do not award either the landlord or tenant with their respective filing fees.

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: June 19, 2015

Residential Tenancy Branch