Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, O, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for "other", and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on May 04, 2015 she sent one envelope to the service address provided for the Landlord, via registered mail. She stated that this envelope contained the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on April 23, 2015 and April 24, 2015.

The female Landlord stated that she received all of the aforementioned documents, with the exception of a copy of the tenancy agreement the Tenant alleges was mailed. All documents the Landlord acknowledged receiving were accepted as evidence for these proceedings.

On September 17, 2015 the Landlord submitted a binder of evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant by registered mail on September 17, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

I note that the Landlord submitted a copy of the tenancy agreement in evidence. As this document has been accepted as evidence, I find there was no need to adjourn the hearing to provide the Tenant with the opportunity to serve the tenancy agreement to the Landlord.

The female Landlord stated that she did not receive a Notice of Hearing that names the male Landlord and that she was not aware the male Landlord was identified as a Respondent in this matter until I brought it to her attention at the hearing. She stated that the male Landlord attended the hearing, at her request, in the event she required him as a witness.

At the outset of the hearing the male Landlord stated that he did not understand he had been named as a Respondent in this matter and he has not read the documents served to the female Landlord.

The Tenant was given the opportunity to request an adjournment for the purposes of serving the male Landlord with the hearing package or to amend the Application for Dispute Resolution by removing the male Landlord as a Respondent. She opted to remove the male Landlord`s name from the Application for Dispute Resolution. The female Landlord did not oppose the amendment and the Application for Dispute Resolution was amended accordingly.

The male Landlord was present during our initial discussions but was excluded from the hearing once his name had been removed from the Application for Dispute Resolution, as the female Landlord indicated she may wish to call him as a witness.

Both parties were represented at the hearing. They were provided with the opportunity to submit to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

I note that an extensive amount of documentary evidence was submitted in evidence, some of which is not particularly relevant to the issues in dispute. Although all of the evidence has been reviewed, it has not all been referenced in this decision.

Issue(s) to be Decided

Is the Tenant entitled to a rent refund for February of 2015?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 01, 2014;
- the parties entered into a written tenancy agreement;
- the tenancy agreement was for a fixed term that was to end on May 31, 2015;
- the Tenant agreed to pay rent of $1,000.00 by the first day of each month; and
- rent was paid, by post-dated cheque, for February of 2015.

The Tenant is seeking to recover the rent that was paid for February of 2015. She stated that she left the rental unit to visit in another province; that she intended to return to the rental unit; that she spent much of January and February in a different province; and she eventually decided not to return to the rental unit for medical reasons.

The Tenant stated that the Landlord and the Tenant agreed, in writing, to end the tenancy on February 28, 2015.

The Landlord stated that on January 07, 2015 the parties verbally agreed that the parties would sign a mutual agreement to end the tenancy at the end of February if the rental unit was in clean condition at the end of January and was in suitable condition to show to prospective tenants. She stated that the rental unit was not left in clean condition at the end of January so the parties did not sign a mutual agreement to end the tenancy.

Both parties submitted a series of text messages that were exchanged on December 29, 2014. In these messages the Tenant asks the Landlord if she is willing to end the tenancy on January 31, 2015 and the Landlord informs the Tenant she will be willing to end the tenancy on February 28, 2015; that she expects rent to be paid for February 28, 2015; and that the Tenant may vacate prior to February 28, 2015.

Both parties submitted a letter from the Tenant, dated December 30, 2014, in which the Tenant informed the Landlord, in part, that she agrees to end the tenancy on February 28, 2015.

The Landlord submitted a text message from the Tenant, dated January 29, 2015, in which the Tenant informs the Landlord, in part, that she is welcome to enter the rental unit for the purposes of showing it to prospective tenants and that she would like to complete a final “walk through” in the last week of February.

Both parties submitted a letter, dated January 30, 2015, which was sent to the Tenant via email. In the letter the Landlord declares, in part, that she is confirming the conversation she had with the Tenant on January 30, 2015, in which the parties agreed that the Landlord would clean the rental unit and remove the Tenant’s personal property; that once the unit has been cleaned and the property removed the code to the lock will be changed; and the Tenant would not be permitted to access the rental unit after it has been cleaned.

Both parties submitted an email from the Tenant to the Landlord, dated January 31, 2015 at 3:52 p.m. In the email the Tenant informs the Landlord, in part, that she does not want the Landlord to remove her personal belongings or change the locks and that she expects to be able to access her home until the end of February unless the Landlord reimburses the rent that was paid for that month.

The Landlord submitted a letter which was sent to the Tenant via email on January 31, 2015 at 12:59 pm. In the letter the Landlord informs the Tenant, in part, that they must sign a Mutual Agreement to End the Tenancy if the parties want to end the tenancy on February 28, 2015. In this letter the Landlord reiterates the offer to clean the rental unit and remove the Tenant’s personal property, with the understanding that the code to the locks would be changed and the Tenant would no longer be permitted to access the rental unit.

Both parties submitted an email from the Landlord to the Tenant, dated January 31, 2015 at 5:40 p.m. In the email the Landlord asks the Tenant if she would like

assistance finding a cleaner to clean the rental unit; that they will do a “final walk through” at the end of February; and that the Tenant has the right to access the rental unit until the end of February. In this email the Landlord reiterates the offer to clean the rental unit with the understanding that the code to the locks would be changed and the Tenant would no longer be permitted to access the rental unit.

Both parties submitted an email from the Tenant to the Landlord, dated January 31, 2015 at 4:30 p.m. In the email the Tenant informs the Landlord that her friends will pick up her remaining personal items; that she is ill and does not “have the physical ability to fight against what you are proposing or attempt to retain access”; that the Landlord should do “whatever you feel necessary with the unit, while maintaining respect for me as your paying tenant and abiding with the tenancy act” (sic); and that she does not plan on going into the unit again, for “health and stress reasons”.

The Tenant stated that when she wrote this email she was “surrendering” to the Landlord. She said that the email was intended to inform the Landlord she could clean the rental unit and remove her personal belongings, but it was not intended to inform the Landlord she was ending the tenancy prior to February 28, 2015.

Both parties submitted additional emails from January 31, 2015, in which the parties confirmed the Tenant’s personal belongings would be returned to the Tenant’s friends.

The Landlord stated that the code to the lock of the rental unit was changed on February 19, 2015. Both parties submitted an email from the Landlord to the Tenant, dated February 19, 2015. In the email the Landlord informs the Tenant, in part, that the cleaning is complete and the code to the lock has been changed.

At the conclusion of the hearing the Landlord stated that she no longer wishes to call a witness.

Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due. As there is no evidence this tenancy had been ended in accordance with the *Act* prior to February 01, 2015, I find that the Tenant was obligated to pay rent for February of 2015 and that she is not entitled to a rent refund on the basis of her decision not to return to the rental unit during the month of February.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* As this tenancy was a fixed term tenancy, the fixed term of which ended on May 31, 2015, I find that neither party had the right to end the tenancy in accordance with section 44(1)(a) of the *Act* until at least May 31, 2015. As neither party attempted to end the tenancy on, or after, May 31, 2015, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a

fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As the tenancy agreement does not specifically declare that the Tenant must vacate the rental unit on May 31, 2015, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. The *Act* simply requires the mutual agreement to end the tenancy to be in writing, it does not require that the agreement be recorded on Residential Tenancy Branch form # RTB-8 (Mutual Agreement to End Tenancy).

I find that the Landlord and the Tenant mutually agreed, in writing, to end the tenancy on February 28, 2015. This decision is based on the following:

- the text messages exchanged on December 29, 2014, in which the Landlord informs the Tenant she will be willing to end the tenancy on February 28, 2015 and that rent must be paid for February 28, 2015;
- the letter from the Tenant dated December 30, 2014, in which the Tenant informed the Landlord that she agrees to end the tenancy on February 28, 2015; and
- the email dated January 31, 2015 at 5:40 p.m., in which the Landlord informs the Tenant that they will do a "final walk through" at the end of February and that the Tenant has the right to access the rental unit until the end of February.

The aforementioned emails convince me that both parties agreed to end the tenancy on February 28, 2015, in writing. Although the *Act* does not permit parties to serve a notice to end tenancy or documents relating to a dispute resolution hearing electronically, with the exception of faxing, it does not prohibit parties from entering into agreements via email or text messages. In my view, a written communication is any form of communication in which the parties communicate with written words, even if those words are exchanged electronically. I find electronic communications an acceptable form of entering into a written agreement, in these circumstances, where the parties regularly communicated electronically and the electronic communications were clear.

I therefore find that this tenancy ended on February 28, 2015, pursuant to section 44(1)(c) of the ***Act.***

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit.

On the basis of the undisputed evidence I find that on, or about, January 31, 2015 all of the Tenant's personal belongings were removed from the rental unit by the Landlord. In spite of the fact all of her belongings had been removed from the unit, I find that it is not reasonable, in these circumstances, to conclude the unit was abandoned or vacated prior to February 28, 2015. I therefore find that this tenancy did not end pursuant to section 44(1)(d) of the Act.

In determining that the rental unit was not abandoned or vacated prior to February 28, 2015 I considered the following:

- the text message dated January 29, 2015, in which the Tenant informs the

Landlord that she is welcome to enter the rental unit for the purposes of showing it to prospective tenants and that she would like to complete a final "walk through" in the last week of February;

- the email dated January 31, 2015 at 3:52 p.m., in which the Tenant informs the Landlord that she does not want the Landlord to remove her personal belongings or change the locks, and that she expects to be able to access her home until the end of February unless the Landlord reimburses the rent that was paid for that month; and
- the fact that rent had been paid for the full month of February of 2015.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

Section 31(1.1) of the *Act* stipulates that landlord must not change locks or other means of access to a rental unit unless the tenant agrees to the change and the landlord provides the tenant with new keys or other means of access to the rental unit.

On the basis of the email Tenant, dated February 19, 2015, I find that the Landlord cleaned the rental unit on behalf of the Tenant and that the Landlord changed the code to the lock of the rental unit on February 19, 2015. I find that the Tenant gave the Landlord permission to change the code to the lock in the email she sent on January 31, 2015 at 4:30 p.m., in which she told the Landlord to do **"**whatever you feel necessary with the unit" and that she will not be returning to the rental unit. Given that this email is part of a series of emails in which the Landlord proposed that she clean the rental unit on behalf of the Tenant with the understanding the Tenant could not access the rental unit after it was cleaned and that the code to the lock would be changed, I find it reasonable to conclude that these were the actions the Tenant was agreeing to.

I find that the Landlord did not comply with section 31(1.1) of the *Ac*t when she did not provide the Tenant with the code to the lock.

Section 67 of the *Act* authorizes me to grant compensation to a tenant if the tenancy suffers a loss as a result of their landlord not complying with the *Act* or the tenancy agreement. In addition to establishing that the Landlord failed to comply with section 31(1.1) of the *Act,* the Tenant bears the burden of proving she suffered a loss as a result of that non-compliance. I find that the Tenant has failed to establish that she suffered a loss as a result of the Landlord not providing her with the new code to the lock and I therefore find that she is not entitled to compensation for that breach.

In reaching the conclusion that the Tenant did not suffer a loss when the Landlord did

not provide her with the new code, I was heavily influenced by the Tenant's testimony that she did not intend to return to the rental unit for medical reasons and by the email, dated January 31, 2015 at 4:30 p.m., in which she informs the Landlord she does not intend to return to the rental unit. As the Tenant did not intend to return to the rental unit, I find she was not disadvantaged by the Landlord's breach of section 31(1.1) of the *Act*.

I find that the Tenant has failed to establish the merits of her Application for Dispute Resolution and I dismiss her claim to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismisses in its entirety.

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: October 01, 2015

Residential Tenancy Branch