

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with cross Applications made by the parties.

The Landlord applied for unpaid rent, to keep all or part of the security deposit, for money owed under the Act or tenancy agreement, and for the return of the filing fee for the Application.

The Tenant applied for the return of all or part of the security deposit, and for double the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The Tenant had an advocate to assist him in his case.

Issues(s) to be Decided

Is the Landlord entitled to the monetary orders requested?

Is the Tenant entitled to the monetary orders requested?

Background and Evidence

On March 16, 2009, the parties signed a tenancy agreement for the rental unit, to begin on April 1, 2009, at a monthly rent of \$1,790.00 due on the first day of the month, and the Tenant paid the Landlord a security deposit of \$895.00 (the "Agreement").

Both parties agree that less than an hour after signing the Agreement it was terminated.

This dispute involves who terminated the Agreement and who is entitled to the security deposit. The Landlord is also requesting a monetary order for advertising costs.

The Landlords' testimony was that the Tenant phoned and repudiated the tenancy agreement. The Landlords allege the Tenant found certain terms of the Agreement to be, "... too harsh...", such as requiring the rent to be paid on the first of the month. According to the evidence of the Landlord, the Tenant said he was not prepared to agree to pay the rent on the first of the month, "... but only when money was available."

The Landlords further allege the Tenant wanted the keys to the unit some two weeks early, without paying prorated rent for that time. According to the Landlords, the Tenant

then told them he would not be moving in. The Landlords then began advertising the rental unit again, and had a third party rent the unit for April 15, 2009.

The Landlords wrote to the Tenant on March 17, 2009, and outlined their position and explained they have accepted the Tenant's cancellation of the Agreement and will try to rent the premises for April 1, 2009. They caution the Tenant that if they are unable to rent the unit, then the security deposit will be put towards the loss and they will hold the Tenant responsible for any further loss of rent. The Landlords wrote another letter to the Tenant on March 24, 2009.

The Landlords' claim is to keep the security deposit and they request an additional \$94.36 for advertising costs.

The Tenant claims he phoned the Landlord to discuss certain terms of the Agreement. He alleges the Landlord became frustrated with the discussion and terminated the Agreement. He claims that he was ready and willing to rent the unit and did not terminate the Agreement.

In testimony the Tenant further alleged the Landlords stated his wife could not run a daycare business at the property. In reply testimony the Landlords state they had no problem with the Tenant's spouse running a daycare business from the unit. They testified that they explained to the Tenant that as long as he had the required permits or licenses and did not exceed the allowed number of children, she could have a daycare business at the unit.

The advocate for the Tenant also argued the Landlords are statute barred from retaining the security deposit, as they did not apply to keep it within 15 days of the end of the tenancy or the receipt of the Tenant's forwarding address.

Analysis

Based on the foregoing, the evidence and affirmed testimony, and on a balance of probabilities, I find as follows:

I deny the Tenant's claim, and allow the Landlords' claim, for reasons explained below.

I find the Tenant breached the Agreement. From the letters exchanged, and the demeanour of the Tenant during the hearing, I find the Tenant did tell the Landlords that the condition that he must pay the rent on the first of the month was too harsh. For example, in his letter to the Landlords he wrote, "... your terms & condition are very hard but still I am ready to rent the house & I will pay the rent on the 1st of every month according to the agreement." (Reproduced as written.)

In the letters exchanged by both parties there is no mention of the Tenant's allegation that the Landlords would not allow a daycare on the property. This only occurs in the Tenant's testimony at the hearing.

It is noted that the Tenant had rented another unit as early as March 17, 2009, and possibly on the same day he entered the Agreement with the Landlords. In cross examination, the Tenant's answers became very evasive and vague when he was asked by the Landlords when he had signed the tenancy agreement he is currently in.

I also note that the Tenant had used his old address as his residence when he signed the Agreement on March 16, 2009, then used a new address on March 18, 2009, when he wrote the Landlords. The Landlords testified that he told them this new address was his business address, yet in his testimony the Tenant stated he had been unemployed for sometime. I note at another point in the hearing the Tenant testified he had ran a daycare business with his wife for the past five years. The above examples, and other inconsistencies in the Tenant's testimony and evidence, lead me to question the veracity of the Tenant.

In regard to the security deposit claim, I find the Tenant did not provide his forwarding address to the Landlords until April 14, 2009, when he filed his Application for Dispute Resolution. I accept the evidence of the Landlords that the Tenant had told them the second address used in the letter was a business address. The Tenant also did not clearly indicate his forwarding address to the Landlords in this letter.

Therefore, since the Landlords filed their claim on April 20, 2009, they were within the 15 days allowed under the Act from receipt of the forwarding address from the Tenant. I allow the Landlords to retain the security deposit for the half month of rent lost due to the Tenant's breach of the Agreement.

I also find that the Tenant caused the Landlords to incur expenses due to his breach, and award them \$94.36 in advertising costs, and their filing fee for their Application.

Conclusion

I find that the Landlords have established a total monetary claim of **\$1,039.36** comprised of \$895.00 for a half month of rent, \$94.36 for advertising and the \$50.00 fee paid by the Landlord for this application. I order that the Landlords retain the deposit and interest of \$895.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$144.36**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: July 28, 2009.

Dispute Resolution Officer