



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, MND, and FF

Introduction

This hearing was in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damages to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the information provided on the Application for Dispute Resolution that the Landlord is claiming compensation for unpaid rent, and the Application for Dispute Resolution has been amended accordingly.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of his security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Neither party raised preliminary issues regarding service of documents or other administrative matters.

The Landlord was advised that his application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because his Application for Dispute Resolution did not provide sufficient particulars of his claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the

claims. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for damages to the rental unit.

Issue(s) to be Decided

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for rent from April of 2009 and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

A copy of a tenancy agreement was submitted in evidence, which indicates that the parties entered into a fixed term tenancy agreement that was scheduled to begin on September 01, 2006 and to end on August 31, 2007; that the tenancy would revert to a month-to-month tenancy at the end of the fixed term of the tenancy agreement; that the Tenant paid a security deposit of \$400.00 on July 25, 2006 and that the Tenant paid another security deposit of \$435.00 on July 27, 2006. Neither party disputes these issues.

A copy a letter written by the Landlord to the Tenant, dated January 05, 2009, was submitted in evidence, in which the Landlord indicated his desire to end the tenancy on April 30, 2009. The Landlord declared that he wished to end the tenancy because he intended to sell the rental unit.

A copy of a letter written by the Tenant to the Landlord, dated January 14, 2009, was submitted in evidence, in which the Tenant indicated that he would like to rent on a month-to-month basis until April of 2009; that he is uncertain of the date that he will be vacating the rental unit; that he will definitely vacate prior to April 30, 2009; and that he will inform the Landlord "before the month we will move".

The Landlord and the Tenant agree that the Tenant telephoned the Landlord on March 06, 2009 and advised him that he wished to end the tenancy on March 31, 2009; that the Landlord agreed that the Tenants could vacate the rental unit on March 31, 2009; and that the Landlord agreed that the Tenants did not need to provide written notice of their intent to vacate the rental unit at the end of March.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord and the Tenant agree that the Tenant telephoned the Landlord on, or about, March 15, 2009, at which time the Tenant requested permission to remain in the rental unit for an four or five days in April; and that the Landlord agreed that the Tenant could remain in the rental unit up until April 05, 2009, providing he paid pro-rated rent for any days in April that the rental unit was occupied.

The Landlord and the Tenant agree that the Tenants vacated the rental unit on April 04, 2009 and that no rent has been paid for that month. The Tenant stated that he did not pay rent for April of 2009 because he assumed that the Landlord would deduct that amount from his security deposit, however the Tenant did not communicate this to the Landlord.

The Landlord and the Tenant agree that the Tenant gave his forwarding address to an agent for the Landlord on, or about, April 06, 2009; that the Tenant did not give the Landlord written authorization to retain any portion of the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit until August 10, 2009.

The Landlord and the Tenant agree that the Tenant was paying \$1,700.00 per month in rent during the latter portion of this tenancy. The Landlord is claiming compensation, in the amount of \$1,700.00, for rent for the month of April due to the fact that the Tenant did not provide one month's written notice of his intent to vacate at the end of March of 2009. At the hearing the Landlord acknowledged that he made a verbal agreement with the Tenant that he would only be required to pay rent for the days that he occupied the rental unit during the month of April. He stated that he is now seeking compensation for the entire month because the Tenant filed a claim pursuant to section 38 of the *Act*. Council for the Landlord argued that the *Act* requires Tenants to give one month's written notice and the Landlord cannot consent to change that statutory requirement.

Analysis

I find that the Tenant paid a security deposit of \$400.00 on July 25, 2006 and a security deposit of \$435.00 on July 27, 2009; that this tenancy ended on April 04, 2009; that the Landlord received the Tenant's forwarding address in writing on, or before, April 06, 2009; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit until August 10, 2009; and that the Landlord did not have authorization to retain any portion of the security deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or he failed to file an Application for Dispute Resolution within the legislated time period.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

Section 26(1) of the *Act* stipulates that rent must be paid when it is due. In these circumstances, I find that the Tenant verbally agreed to pay rent for the days in April that he occupied the rental unit; that he occupied the rental unit for four days in April; and that he did not pay the Landlord for the four days he occupied the rental unit in April of 2009. I therefore find that the Tenant must pay the Landlord \$226.64 for the four days that he occupied the rental unit in April of 2009. This amount was calculated by dividing the monthly rent of \$1,700.00 by thirty, as there are thirty days in April.

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

I find that the Tenant is also liable for paying rent for the period between April 05, 2009 and April 30, 2009 because he did not end this tenancy on a date that was permitted by the *Act*. I find these actions prevented the Landlord from making an effort to find new tenants for any portion of April of 2009, as the Landlord did not have a reasonable assurance that the rental unit would be vacant in April of 2009. As the Tenant's notice to end the tenancy was not in compliance with the *Act*, the Landlord did not know, with certainty, that the tenancy would not continue until April 30, 2009 and he could not, therefore, find new tenants for April.

As the Applications for Dispute Resolutions filed by each party have merits, I find that they are each responsible for the cost of filing their own Application for Dispute Resolution.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

I find that the Tenant has established a monetary claim of \$1,697.14, which is comprised of \$1,670.00 for double the security deposit plus \$27.14 in interest on the original amount of the security deposit.

I find that the Landlord has established a monetary claim of \$1,700.00 as compensation for unpaid rent and loss of revenue from April of 2009.

After offsetting the two monetary claims, I find that the Tenant owes the Landlord \$2.86 and I am issuing a monetary Order in that amount.

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: August 19, 2009.

Dispute Resolution Officer