



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlord requested a Monetary Order for unpaid rent, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and award of the filing fee. The tenant requested a Monetary Order for double the security deposit and recovery of the filing fee. Both parties confirmed receipt of the application and evidence made by the other party. Both parties were provided an opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Is the landlord entitled to compensation from the tenant for unpaid rent or damage or loss?
2. Is the landlord entitled to retain the tenant's security deposit?
3. Is the tenant entitled to return of double the security deposit?
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from both parties and upon review of the documentary evidence provided to me, I make the following findings. On June 29, 2009 the parties met at the rental unit and made a verbal agreement that a month-to-month tenancy would commence July 15, 2009 for rent of \$1,600.00 due on the 1st day of the month. The tenant paid the landlord an \$800.00 security deposit on June 29, 2009.

The landlord did not provide keys or a tenancy agreement to the tenant at that time but indicated it would be accomplished before the tenancy was set to begin. On June 30, 2009 the tenant contacted the landlord to advise that she did not wish to proceed with the tenancy and requested return of the security deposit. The tenant telephoned the landlord a second time in an effort to resolve their dispute and then delivered a written letter to the landlord on June 30, 2009 requesting return of the security deposit. The landlord made this application to retain the security deposit on July 15, 2009. The landlord re-rented the unit effective August 2009.

In making this application, the landlord is seeking to recover loss of rent for the entire month of July 2009 in the amount of \$1,600.00. In making this application, the tenant is seeking return of double the security deposit in the amount of \$1,600.00.

The contents of the telephone conversations that took place on June 30, 2009 were in dispute. The tenant testified that upon informing the landlord of the tenant's intention not to proceed with the tenancy the landlord informed the tenant that they had made a contract and the tenant would be responsible for paying rent for July 2009. The tenant claimed that she told the landlord that if she had to pay rent for July 2009 she would move in and give a 1 month notice to end tenancy. It was the tenant's submission that upon informing the landlord the tenant would move in for one month, the landlord stated that the rental unit was not a hotel and that the landlord would be insisting on a six month lease.

The landlord denied that she insisted on a six month lease and pointed to the fact that all of her other tenants are on month-to month tenancies with the exception of one tenant who insisted on a lease.

The tenant presented her boyfriend as a witness to the telephone conversation between the tenant and the landlord on June 30, 2009. The tenant's boyfriend testified that the tenant had put the call on speakerphone and he could hear the landlord say to the

tenant that the rental unit was not a hotel and that the landlord would require the tenant to sign a six month lease.

In response to the testimony of the tenant the landlord responded that the tenant has completely fabricated the story about the six month lease to avoid paying rent for July 2009. The landlord explained that a tenancy agreement was formed when the tenant paid the security deposit but that she did not prepare a written tenancy agreement at that time because she was in a hurry and her daughter was waiting in the car outside with the landlord's grandchild.

Analysis

The Act defines "tenancy agreement" to mean 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. Section 16 of the Act, provides 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. Section 17 permits a landlord to require a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

Based on the all the provisions of the Act, including those identified above, I find that the parties entered into a verbal tenancy agreement on June 29, 2009 when the parties discussed the terms of tenancy and the landlord accepted the security deposit. I have no doubt that at that meeting the parties had agreed that the tenancy was to be on a month-to-month basis starting July 15, 2009.

At issue is whether the landlord attempted to change the terms of the tenancy by insisting the tenant sign a six month lease. The landlord disputes this allegation and points to her other month-to-month tenancies in support of the landlord's position. My decision is based on the balance of probabilities which means I find one version of the

events more likely than the other version presented to me. In making my decision I have considered that the tenant took the unusual step of informing the landlord that she intended to give one month's notice and move in for only one month and that it is reasonably likely that the landlord would have departed from her normal manner of conducting business upon hearing of the tenant's intentions. I also note that in the letter written by the tenant on June 30, 2009 the tenant refers to the landlord's attempt to change the tenancy from a month-to-month basis to a lease and that the tenant has been consistent in this position since that date. Further, since the written tenancy agreement had not yet been signed by the parties and the landlord had not yet given the keys to the tenant, yet the tenant had paid a security deposit, I find it reasonably likely that the landlord was of the belief that she was in a position to insist that the tenant agree to change the terms of tenancy.

In order to succeed in establishing an entitlement to compensation from another party, the party making the claim must also show that they did whatever was reasonable to minimize their loss. Having had the tenancy agreement prepared and signed on the date the security deposit was paid would have eliminated any doubt as to the terms of the tenancy and would have provided assurance to the parties that the tenant's rights and obligation were with respect to a month-to-month tenancy only. The onus to prepare the tenancy agreement is upon the landlord.

In considering all of the above, I find it more likely than not that the landlord tried to change the terms of tenancy and that attempt resulted in the tenant not taking possession of the rental unit. I also find the landlord failed to mitigate losses by ensuring the written tenancy agreement was signed on the date the security deposit was taken. Therefore, I do not find the landlord entitled to seek compensation from the tenant for loss of rent as I find the landlord's actions resulted in the loss of rent for July 2009.

As the landlord had made this application no later than July 15, 2009 I find the landlord complied with the Act by making an application to retain the security deposit within 15

days of receiving the tenant's forwarding address in writing. Therefore, the tenant is not entitled to double the security deposit.

I find the tenant entitled to return of the original deposit in the amount of \$800.00 and I order the landlord to return the security deposit to the tenant forthwith. The tenant is provided a Monetary Order in the amount of \$800.00 to serve upon the landlord and file in Provincial Court (Small Claims) to enforce as an Order of that court.

I find both parties contributed to this dispute and I make no award for return of the filing fees paid for these applications.

Conclusion

The landlord's application was dismissed in its entirety. The tenant was partially successful and has established an entitlement to return of the original amount of the security deposit. A Monetary Order has been provided to the tenant in the amount of \$800.00 to serve upon the landlord.

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 26, 2009.

Dispute Resolution Officer