

DECISION

Dispute Codes

MNSD, MNR, MNDC, FF

Introduction

This in person hearing was convened in response to an application by the landlord and an application by the tenant.

The landlord seeks unpaid rent for the month of May 2009 and lost revenue for one additional month, to retain the security deposit in partial satisfaction of the monetary claim, and to recover the filing fee for their application. The landlord filed their application on August 31, 2009.

The tenant seeks for the return of their security deposit and compensation of double the original amount as per section 38 of the Act, and to recover the filing fee for their application. The tenant filed their application August 26, 2009.

Both parties attended the in - person hearing and each participated with their testimony and prior submissions of evidence.

Issues(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

There is considerable contrast in the evidence presented by the parties. The undisputed portions of the evidence and testimony of the parties is as follows. The tenancy began

June 01, 2008 as a month to month tenancy, and ended when the tenant vacated April 30, 2009. Rent was payable on the 1st of each month in the amount of \$1270. At the outset of the tenancy the landlord collected a security deposit in the amount of \$600. There was no start of tenancy or end of tenancy condition inspections.

The tenants claim that after some communication with the landlord on April 21, 2009, the tenants determined to vacate April 30, 2009. The tenants provided into evidence a document purporting to the communication with the landlord – a rental agreement proposal document, allegedly signed by only the landlord. The landlord denies any such communication with the tenant and denies producing the document the tenants submitted, and accused the tenant of forging the document – including their signature. Regardless, the tenant testified they moved out April 30, 2009 without notifying the landlord. The landlord testified they did not know the tenants were vacating and subsequently confirmed they vacated in the later part of May, 2009, after repeated written requests to the tenant for the rent for May 2009. The landlord further testified that after knowing the tenants vacated they could not immediately re-rent the rental unit for June 2009, due to the short notification, and quickly proceeded to advertise the unit. As a result, the landlord is seeking unpaid rent in the amount of \$1250, and lost rental revenue of \$1250 for a total of \$2500.

The tenant claims that, regardless whether they provided the landlord with a written Notice to End or not, the landlord knew they were vacating at the end of April 2009, following their contentious communication on April 21, 2009. The tenant submitted an advertisement for the suite stating it was *available immediately* – dated April 26, 2009, as evidence the landlord knew the tenant was vacating. The tenant further claims they further confirmed with the landlord that they had vacated the suite by sending the landlord their forwarding address and request for the security deposit by registered mail – sent on May 20, 2009. The tenant provided a copy of the letter and the registered mail tracking information showing it was received by the landlord on May 22, 2009. As a result the tenant is claiming \$1200 plus interest as compensation under Section 38 for double the security deposit.

Analysis

On preponderance of all the evidence before me, and on the balance of probabilities, **I find** that the tenants did not provide the landlord with the required proper Notice to End the tenancy as per Section 45 of the Residential Tenancy Act (the Act). **I prefer** the tenant's evidence and testimony and **I find** that despite the benefit of a written Notice to End, the landlord knew the tenancy was coming to an end and began advertising the rental unit prior to the end of April 2009. In this case, the landlord had an obligation to attempt to mitigate any foreseeable revenue losses, but the lack of proper notice from the tenant and their determination to vacate as quickly as they did, made the landlord's effort to re-rent for May difficult, at best. I find the tenancy ended April 30, 2009 and the landlord is entitled to loss of revenue for May, 2009, in the amount of \$1270. The landlord is also entitled to recover the filing fee of \$50 for a total entitlement to the landlord of **\$1320**.

In respect to the tenant's claim. The tenancy end April 30, 2009. The tenant provided the landlord with (their) written forwarding address by registered mail in May 2009. Regardless, the landlord did not return the security deposit or applied for dispute resolution until August 31, 2009.

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on April 30, 2009, and that the tenant provided (their) forwarding address in writing prior to that date by May 22, 2009. **I find** the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenant has established a claim for the security deposit of \$600, accrued interest of \$5.26, and double the base amount of the security deposit in the amount of \$600, for a total of \$1205.26. The tenant is also entitled to recover the \$50 filing fee for this application for a total entitlement to the tenant of **\$1255.26**.

The landlord is owed the difference by the tenant, of the two respective entitlements, in the amount of **\$64.74**

Conclusion

I grant the landlord an Order under Section 67 of the Act for the balance due of **\$64.74**. If necessary, this order may be filed in the Small Claims Court 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*.
