



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenant for an order for the return of double her security deposit. The landlord was not confident in his ability to communicate in English and was assisted by his daughter at the hearing.

The landlord's application for dispute resolution indicated that the claim against the tenant was for \$1,100.00 for rent for the month of July. The landlord submitted evidence regarding damage to the rental unit and at the hearing indicated that the intention of the claim was to receive an award for \$1,100.00 and not to apply the security deposit to that award, but to be permitted to retain the deposit to compensate him for damages to the unit. The landlord testified that his submission of evidence of the cost of repairs was intended to demonstrate that he should be permitted to retain the deposit. The tenant testified that it was her understanding that the landlord was seeking to retain the deposit in partial satisfaction of his claim for rent for July and that if he was successful, she may be ordered to pay whatever balance was owed. The landlord did not formally amend his application and did not request at the hearing that his application be amended. I find that a plain reading of the application indicates that the security deposit was to be applied to unpaid rent for July. The application made no reference whatsoever to damages to the unit. The landlord's claim is limited to the amount claimed on the application and damages to the rental unit were not considered.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to an award of double her security deposit?

Background and Evidence

The parties agreed that rent was set at \$1,100.00 per month and that in or about December 2009 the tenant paid a \$550.00 security deposit. The rental unit is in the basement of a residence in which the landlord resides on the upper floor. The tenant is herself the landlord of another property (the "Tenant's Property") which she had rented to other tenants (the "Other Tenants").

The tenant testified that in early May, the landlord verbally told her that she would have to vacate the rental unit in 2 months because he intended to move his daughter into the unit. The tenant gave notice to the tenants at the Tenant's Property advising them that they had to vacate because she would be moving into the Tenant's Property. The Other Tenants requested one month's compensation from the tenant and on June 15 gave notice that they would be vacating the Tenant's Property on July 1. Shortly thereafter, the tenant gave the landlord notice that she would be vacating the rental unit on July 1 and also requested one month's compensation. The tenant produced a witness who testified that he was present when the landlord advised that the tenant needed to vacate the rental unit because he would be moving his daughter into the unit.

The landlord denied having told the tenant that she needed to leave or that he would be moving his daughter into the unit. The landlord testified that he attempted to re-rent the unit for July but was unable to do so.

Analysis

Sections 49(3) and 49(7) of the Act provide as follows:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act provides as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

52(a) be signed and dated by the landlord or tenant giving the notice,

52(b) give the address of the rental unit,

52(c) state the effective date of the notice,

52(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

52(e) when given by a landlord, be in the approved form.

The Act requires that notices to end the tenancy be in a specific form in part in order to ensure that both parties are aware of their rights and obligations under the Act. A notice which is not given in the approved form is not effective to end the tenancy. In this case, even if I were to accept that the landlord told the tenant that she had to move, the landlord did not give the tenant a notice in the approved form and therefore the landlord's notice was not effective to end the tenancy. I find that the tenant therefore did not have the right to end the tenancy on 10 days notice. I find that the landlord made a reasonable effort to re-rent the unit for July and was unable to do so. I find that the landlord is entitled to recover lost income for the month of July and I award the landlord \$1,100.00. I also find that the landlord is entitled to recover the \$50.00 filing fee paid to bring this application. I order the landlord to retain the \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$600.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As for the tenant's claim, the only circumstances under which the tenant would be entitled to an award of double her security deposit pursuant to section 38 of the Act is if the landlord had failed to either return the deposit or make an application for dispute resolution within 15 days of the end of the tenancy. In this case, the landlord applied to

retain the security deposit before the tenancy ended. I find that the tenant is not entitled to double the security deposit and her claim is dismissed.

Conclusion

The tenant's claim is dismissed. The landlord is awarded \$600.00 and may retain the security deposit.

Dated: November 08, 2010

Dispute Resolution Officer