



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to an amended application by the landlord filed on July 20, 2010 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent / compensation for damage or loss - Section 67 - \$2500.
2. An Order to retain the security / pet deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72 - \$50

And:

An application by the tenant filed on August 30, 2010 pursuant to the *Residential Tenancy Act* for Orders:

1. An Order for return of the security / and compensation for double the return - Section 38 - \$2300
2. An Order to recover the filing fee for this application - Section 72 - \$50

Both parties attended the hearing and each were given a full opportunity to settle their dispute, present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(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

Both parties have submitted document evidence and provided sworn testimony as follows.

The tenancy began on June 01, 2009 as a fixed term tenancy with an end date of June 30, 2010, with provision for the tenancy to continue as a month to month tenancy. The tenant vacated on June 30, 2010. Rent in the amount of \$2300 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1150 – which the landlord retains. There was no start or end of tenancy inspections conducted or recorded. The parties did not submit a copy of the tenancy agreement.

The tenant testified that they provided the landlord with a written Notice to End on May 30, 2010- for June 30, 2010) which they claim they placed in the landlord's mailbox at the rental unit for the purpose of the landlord to receive rent and occasional mail. The landlord testified he has never received the Notice to End and that the tenant should have also phoned him and advised him personally. Regardless, the landlord claims he was verbally notified in a phone call on June 20, 2010. The landlord agrees that the referenced mailbox is utilized by him to receive the rent and certain mail as the landlord. The tenant proceeded to vacate on June 30, 2010. The landlord was out of the country – returning on July 14, 2010 - thus utilized an agent to oversee the end of the tenancy. The tenant also testified that they left a letter to the landlord on June 30, 2010 in the same mailbox notifying him of their forwarding address. The landlord testified that he has never received this letter; however, came into possession of the tenant's forwarding address on June 25, 2010. The tenant provided a copy of their Notice to End, titled "1 year lease contract". The tenant claims return of double the amount of their security deposit - \$2300.

The landlord testified that he did not receive the tenant's Notice to End and on being notified on June 20, 2010, he did not have sufficient notice or time to secure a new tenant for July 01, 2010. The landlord also claims that the tenant left the rental unit dirty, which required cleaning. The landlord submitted an invoice for cleaning dated October 15, 2010 for cleaning of the entire house in the amount of \$224. The landlord claims one month's rent and cleaning, in the amount of \$ 2524.

Analysis

I do not have benefit of a copy of the tenancy agreement. None the less, based on the testimony of the parties and on the preponderance of the evidence before me I find that the landlord was provided with a Notice to End in accordance with the Act. The landlord

may have appreciated also being notified by telephone of the tenant's plans to vacate, but, the Act requires that any such notice be given to the landlord *in writing*, and I am satisfied that this occurred. Therefore, **I dismiss** the landlord's claim for unpaid rent, without leave to reapply. I do not find the landlord's evidence of an invoice for cleaning, dated October 15, 2010, credible evidence that the rental unit was left unclean, and in the absence of an end of tenancy inspection report, **I dismiss** the landlord's claim for cleaning, without leave to reapply. The landlord's application is effectively **dismissed** in its entirety.

In respect to the tenant's claim for return of their security deposit: I accept that the tenant place *written notification* of their forwarding address in the landlord's mailbox. The Act requires that a forwarding address be provided *in writing*. I further accept that the landlord returned from his trip on July 14, 2010 and would then have had opportunity to retrieve his mail. The landlord filed for dispute resolution within 15 days of receiving the forwarding address *in writing*, therefore would not be liable for any doubling of the security deposit provision in the Act.

As I have dismissed the landlord's monetary claim, it is appropriate that I return the tenant's security deposit in its entirety, and I will so Order. As the tenant has been successful in this application, I further grant the tenant recovery of their filing fee in the amount of \$50, for a total entitlement of **\$1200**.

Conclusion

I grant the tenant an order under Section 67 of the Act for the amount of **\$1200**. 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*.