



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications by the parties for dispute resolution.

The tenant filed on September 17, 2010 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of double the security deposit (\$1575) - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

The landlord filed on January 12, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for compensation for loss (4826.88) – Section 67
2. An Order to retain the security - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant sworn evidence and make relevant submissions. 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

The tenancy began on October 01, 2009 as a fixed term tenancy agreement with an end date of September 30, 2010. The tenant vacated March 31, 2010 following

discussions with the landlord and with the landlord's prior knowledge, which the parties agree, amounted to at least one month's knowledge. Rent in the amount of \$1575 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 \$787.50.

The hearing did not have benefit of condition inspection reports or whether there was agreement between the parties as to the administration of the security deposit at the end of the tenancy. None the less, the evidence of the landlord is that the landlord was readily returning the security deposit – and then deducting it from “costs” charged to the tenant (Security Deposit Return form).

The tenant testified that subsequent to vacating the rental unit they e-mailed the landlord their forwarding address expecting the return of their security deposit as the parties had not agreed on the disposition of the security deposit. The tenant does not dispute that he did not provide the landlord with their forwarding address in writing, although e-mail was a typical way the parties communicated. However, the landlord disputes receiving the tenant's e-mail and claims they were unaware of the tenant's forwarding address until they received the tenant's application for dispute resolution. The hearing did not have benefit of further evidence in this respect.

The landlord filed for dispute resolution to retain the security deposit in partial satisfaction of their monetary claim for costs to re-rent the rental unit following the tenant's departure from the rental unit earlier than the lease term. The landlord testified that they had to expend time and effort to secure a new tenant as quickly as possible to stem any potential losses in rental revenues, which may have resulted in the landlord seeking any such losses from the tenant in the event they were unable to re-rent the unit. The landlord testified that their claim for costs, in the amount of \$826.88, is comprised of a fee equivalent to one half month's rent and represents their mitigation of loss in this matter for: *time listing advertisements on several online sites, time fielding enquiries, time to conduct record checks, interviews, applications, paperwork, phone calls.*

The tenant argues that the landlord's costs were minimal and are not reasonable, given they had notice of the impending move and that he remained in the rental unit longer than he preferred.

The landlord testified that the lease terms clearly notified the tenant that although early termination of the lease was acceptable, that the tenant would be responsible for costs of the landlord to mitigate potential loss of revenue for which the tenant would be held accountable.

Analysis

On the preponderance of the evidence and sworn testimony of the parties, I find the tenant's claim for return of double the original security deposit is not supported by evidence that the tenant provided the landlord with a written forwarding address as required by Section 38(1) of the Act. I find that the doubling provisions of the Act do not apply in this matter. The landlord's evidence (Security Deposit Return form) does not dispute that the tenant is entitled to the return of their original security deposit in the amount of \$787.50. I find the tenant is entitled to the return of their original deposit in the amount of **\$787.50**.

In regards to the landlord's claim for compensation for loss – costs, it must be emphasized that in order to claim for loss under the *Act*, the party claiming the loss bears the burden of proof. Moreover, in this matter, the applicant must satisfy the following test as described in Section 7 of the Act:

1. Proof of the loss,
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

Therefore, the claimant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the monetary amount of the loss. The claimant must show that reasonable steps were taken to address their situation and to mitigate their losses.

Despite the lack of a detailed and itemized list of costs associated with re-renting the rental unit vacated by the tenant, I accept, on a balance of probabilities, that the landlord incurred a variety of costs until the rental unit was re-rented, and I find the claimed cost to be reasonable. I find that the tenancy agreement provided notice to the tenant of such a cost, and that the landlord acted to mitigate further loss which then may have been charged to the tenant. I find that the landlord's claim meets the components of the above test for loss and mitigation of loss, and as a result, I allow the landlord's claim in the amount of **\$826.88**.

As the parties have each been successful in their claims, I decline to grant either party recovery of their filing fees. The tenant's security deposit held by the landlord will be off-set from the award made herein. Effectively, the landlord is owed the difference in the parties' respective entitlements.

Conclusion

I Order that the landlord retain the security deposit of \$787.50 in partial satisfaction of their claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$39.38**. 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*.