



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with a cross application by the parties. The tenant filed an application seeking the return of his security deposit. The landlord filed a cross application seeking a monetary claim due to loss of rent due to an alleged breach of contract by the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the tenant breach the tenancy agreement or *Act* by failing to end the tenancy in accordance with the *Act*?

Did the landlord have a right pursuant to section 38 of the *Act* to retain the tenant's security deposit?

Background and Evidence

The parties are in dispute about the terms of the tenancy agreements they entered into and whether there was a breach of those agreements.

On March 14, 2010 an individual entered into a tenancy agreement with the landlord to rent the rental unit for the period of March 21, 2010 to April 21, 2010. The monthly rent was \$1,750.00 and a security deposit of \$850.00 was paid on March 12, 2010. The person named on the tenancy agreement never occupied the unit and both the landlord and the tenant agree that the tenant occupied the rental unit during this term.

The tenancy agreement provided that at the end of the fixed term the tenancy could continue on a month to month basis or for another fixed term.

The next tenancy agreement was signed by the landlord and the tenant named in this application. The agreement states that the tenancy is for a fixed term beginning April 21, 2010 ending May 21, 2010. Again, the parties have marked on the agreement that this tenancy may continue on a month to month basis at the end of the fixed term or continue on for another fixed term.

However, the parties each initialled the boxes on the tenancy agreement adjacent to the term which states that the tenancy ends and the tenant must move out of the residential unit. The tenancy agreement specifies that if this option is selected the parties must initial the boxes provided.

The tenant argues that he had the right and option to treat the tenancy at an end effective May 21, 2010. The landlord argued that it was made clear to the tenant that he had to give proper notice under the *Act* and that the agreement reverted to a month to month tenancy after May 21, 2010.

The tenant seeks the return of the double his security deposit plus the recovery of the \$50.00 filing fee paid for this application. The landlord seeks compensation for the sum of \$1,800.00 representing the loss of one month's rent plus the recovery of the filing fee paid for this application.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the *Act* or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the *Act* or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Both the tenants and the landlord have the burden of proving their respective claims.

I find that the tenant's argument cannot prevail given the evidence before me. If the tenant had intended to have a tenancy which ended and required him to vacate than the written tenancy agreement should have been properly filled out. Instead, the intent of the parties at the time the agreement was signed is in question because of the failure to fill out the agreement correctly.

I find that because the parties did not specifically did not mark the section of the tenancy agreement which requires the tenancy to end at the end of the fixed term; I must consider that the tenancy agreement reverted to a month to month tenancy after May 21, 2010.

Therefore, pursuant to section 45 of the *Act* the tenant was required to give 30 day's notice, in writing to end the tenancy. I am satisfied that the tenant did give effective notice to end the tenancy through his letter to the landlord ending the tenancy effective June 21, 2010.

As a result, I find that the landlord is entitled to compensation of 1 month's rent, or \$1,750.00.

However, I also find that the landlord failed to comply with section 38(1) of the *Act* which required that the landlord either returned the tenant's security deposit, or filed an application for Dispute Resolution to retain the security deposit, within 15 days of the end of the tenancy or receiving the tenant's forwarding address in writing.

As the landlord failed to comply with section 38(1) of the *Act*, the landlord must pay the tenant double his security deposit pursuant to section 38(6) of the *Act* for the sum of \$1,750.00.

The monetary claims established by each party cancel each other out resulting in no award for either party and I find that each party should bear their own cost to pursue their application for Dispute Resolution.

Conclusion

I find that each party has established a monetary claim in the amount of \$1,750.00 and the claims cancel each other out resulting in no monetary claim to either party.

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: January 14, 2011.

Residential Tenancy Branch