

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties were represented at the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2010 and that the tenant vacated the rental unit on July 23, 2010. The parties further agreed that the landlord holds a \$300.00 security deposit.

The landlord testified that there were problems throughout the tenancy and on July 22, she believed that the tenant was engaged in illegal activity and confronted him and threatened to telephone the police. The landlord claimed that the tenant asked her not to phone the police and stated that he would leave the rental unit and would not return until the next day. The landlord claimed that the tenant voluntarily surrendered his keys to reassure the landlord that he would not attempt to return to the unit that evening. The landlord stated that she made arrangements with the tenant to retrieve his belongings after 6:00 on July 23, but the tenant arrived at the rental unit in the morning of July 23 requesting access. The landlord denied him access at that time and instructed him to return in the evening.

The landlord testified that in the evening of July 23, the tenant returned, the police were summoned and the police explained to the landlord that her insistence that the tenant leave the rental unit immediately was illegal. The police instructed the landlord to return the keys to the tenant and evict him through the procedure outlined under the *Residential Tenancy Act*. The landlord testified that she then served the tenant with a one month notice to end tenancy. The landlord insisted that when she conversed with the tenant on July 22, her intention was that the tenant would leave for just one evening and would continue his tenancy until the end of August, which would give her one full month's notice. The landlord testified that she was unable to locate another tenant for

the month of August and holds the tenant responsible for lost income for that month as he failed to give 30 days' notice to end his tenancy as required under the Act.

The tenant's mother acted as his agent and testified that on July 22 the tenant advised her that he had been evicted from the rental unit. The agent drove the tenant back to the rental unit on the morning of July 23 and was present when the landlord refused to give the tenant access to the unit to retrieve his belongings. The agent was present on July 23 when the tenant was finally given access and it was into her vehicle that the tenant loaded his belongings when he vacated the unit.

The parties agreed that the landlord received the tenant's forwarding address via registered mail on or about October 20. In his written statement, the tenant claimed that a copy of his forwarding address was placed in the landlord's mailbox on August 10. The tenant's agent claims that she witnessed this service. The landlord denied having received the forwarding address on August 10. The tenant did not make a formal claim for the return of the deposit but seeks an order that the landlord return double his security deposit pursuant to section 38(6) of the Act.

Analysis

Although the landlord claimed that her conversation with the tenant on July 22 was solely for the purpose of him leaving the unit for just one night, I find this to be unlikely. The landlord expressed grave concern over the tenant's alleged participation in illegal activity and her refusal to grant him access the following morning has caused me to believe that she in fact either demanded that he permanently vacate or they agreed that the tenancy would end immediately. I find that the landlord intended that the tenancy end on immediately and is barred from claiming lost income for August as the tenancy ended abruptly either at her bidding or her agreement. I dismiss the landlord's claim.

Although the tenant did not make a formal claim for the return of his security deposit, Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence to suggest that the tenant has extinguished his right to the return of the deposit. I am not satisfied that the landlord received the forwarding address prior to October 20 and therefore find that the tenant is not entitled to recover double the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$300.00 security deposit. I grant the tenant a monetary order under section 67 for \$300.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order for \$300.00.

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: February 28, 2011

Residential Tenancy Branch