



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double his security and or pet deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was sent via registered mail on October 27, 2010. Mail receipt numbers were provided in the Tenant's evidence along with a copy of the tracking website which shows the Landlord signed for the documents on November 1, 2010. I find the Landlord has been sufficiently served notice of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The Tenant and his Agent testified that they did not receive a copy of the Landlord's evidence. The Landlord testified his evidence was sent to the Tenant via regular mail on November 25, 2010.

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective August 15, 2010 which was set to expire on August 31, 2011. Rent was payable on the first of each month in the amount of \$1,700.00 and on August 14, 2010 the Tenant paid \$900.00 towards the security deposit. The Tenant attended

the move-in inspection with the Landlord's Agent on August 14, 2010 and the move-out inspection on September 29, 2010. The Tenant provided his forwarding address as listed on the move-out inspection report on September 29, 2010.

The Tenant's Agent testified that on August 30, 2010 the Tenant provided the Landlord's Agent with written e-mail notice to end his tenancy effective September 30, 2010. As per the copy of the leasing invoice issued to the Landlord by his Agent the rental unit was re-rented as of October 1, 2010 for a fee of \$918.75. The Tenant later called the Landlord's Agent to have his security deposit return but was told the cost to re-rent the unit was higher than his security deposit and no money would be returned.

The Landlord testified and confirmed he has not made application for dispute resolution and does not possess an Order issued by the *Residential Tenancy Branch* authorizing him to retain the security deposit. That being said, the Landlord stated he had the Tenant's written permission to keep the security deposit and referred to a document titled "Residential Tenancy Agreement – END OF TENANCY AGREEMENT" that was provided in the Tenant's evidence package and the Landlord's evidence and was signed by the Tenant September 2, 2010. The Landlord further explained that this agreement to end the fixed term included a payment for \$1,700.00 as they had anticipated the Landlord would suffer at least one month's loss of rent as they thought the unit would be vacant for at least one month. The Landlord stated he mitigated his losses by having hiring his Agent to re-rent the unit for as soon as possible and as a result he did not go after the Tenant for the payment of the \$1,700.00 as the loss was not incurred.

The Tenant confirmed signing the end of tenancy agreement. He said the Agent explained to him how it was a very serious legal matter to break the lease agreement and that he could be responsible for the rent for the remainder of the lease. The Agent argued that the Landlord would be required to prove he suffered a loss in order to keep the security deposit.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

Section 38 (4) (a) states a landlord may retain an amount from a security deposit if at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

The evidence supports the Tenant entered into a mutual agreement to end his fixed term tenancy agreement early and that the Tenant agrees to pay the Landlord for the early termination of the agreement. This agreement clearly states "The Tenant hereby surrenders the currently held Security deposit of \$900 to the Landlord..." I do not accept the Agent's argument that the Landlord is required to prove he suffered a loss as I find the evidence supports this tenancy ended based on the written mutual agreement as noted above.

Based on the aforementioned I find the Tenant has failed to provide sufficient evidence that the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement; therefore I dismiss his claim without leave to reapply.

As the Tenant has not been successful with his application I find he must bear the burden of his application fee.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 24, 2011.

Residential Tenancy Branch