



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MND, MNSD

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$1350.00.

The landlord's application is a request for \$450.00, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards this claim.

Background and Evidence

The tenant testified that:

- He paid the full rent for the month of April 2011.

- On April 5, 2011 he gave the landlord a one month Notice to End Tenancy and in that notice he stated that the room was now vacant and available for immediate rental.
- When speaking with the landlord, the landlord had indicated to him he would not be returning the security deposit, because he was not going to have time to re-rent the unit as he was going on vacation.
- When he found out that the landlord was not going to return the security deposit he decided that, since he had paid for the full month of April, he wanted to move back into the rental unit, however the landlord would not allow him do so.
- Since the landlord would not allow him back into the rental unit he believes he should have his April 2011 rent returned.
- Further since the landlord did not apply to keep the security deposit, he requests that the landlord be ordered to return double the security deposit.
- He gave the landlord a forwarding address in writing on April 5, 2011 at the same time as giving the Notice to End Tenancy.
- He has not provided a copy of the forwarding address in writing as it was given to the landlord and he did not retain a copy for himself.

The landlord testified that:

- The tenant did pay the full rent for the month of April 2011.
- On April 5, 2011 the tenant gave him a one month Notice to End Tenancy, however that letter also stated that he had moved out of the rental unit, and it was available for re-renting.
- On April 8, 2011 the tenant return the keys to the rental unit.
- The notice he got was not the required one month Notice to End Tenancy however he attempted to re-rent the unit by posting an advertisement on the bulletin board of a well known local bookstore.
- He was unable to re-rent the unit and lost approximately 3 months' rent.

- He therefore does not believe that he should have to return any of the April 2011 rent, and in fact believes that the applicant should pay him \$330.00 for lost revenue in the following month.
- Also at the end of the tenancy he found that one of the blinds in the rental unit no longer worked and therefore he believes that the tenant should also pay for replacement of that blind and is asking for \$120.00 as an estimated cost of replacement.

In response to the landlord's testimony the tenant testified that:

- The blind for which the landlord is claiming was not working properly right from the beginning of the tenancy.
- He does not believe that the landlord attempted to re-rent the unit, because the landlord told him he was not going to do so.

Analysis

Tenant's application

April 2011 rent

I will not allow the tenant's request for the return of the April 2011 rent. In the letter given to the landlord on April 5, 2011 the tenant stated that he had vacated the rental unit and it was available to the landlord for re-renting. Therefore it's obvious that the tenant voluntarily gave up possession of the rental unit to the landlord. The tenant even returned the keys.

The tenant believes that since he had paid the full rent for the month of April 2011 he should have been allowed to move back into the rental unit, however it is my decision that he did not have the right to do so since he had already given possession of the rental unit back to the landlord.

Security deposit

The tenant has applied for the return of double the security deposit; however the tenant has not met the burden of proving that he gave the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

The tenant claims that he gave the landlord a forwarding address in writing by hand on April 5, 2011, however he has supplied no evidence in support that claim, and the landlord denies ever receiving a forwarding address in writing.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application was premature.

Landlords application

Lost rental revenue

I deny the landlords claim for lost rental revenue; because the landlord has not met the burden of proving the attempted to re-rent the unit and thereby mitigate his loss.

The landlord claims to have posted advertisements in a popular local bookstore however he has supplied no evidence in support of that claim.

Broken blind

I also deny the landlords claim for a broken blind. The landlord did not do a move in inspection report at the beginning of the tenancy, and therefore it is only his word against that of the tenant as to the condition of the blind at the beginning of the tenancy, and the tenant testified that the blind was in poor condition when he moved in.

Further even if the blind was functioning properly at the beginning of the tenancy, the landlord has supplied no evidence to show that the tenant caused any damage to the blind and therefore the damage may just be the result of normal wear and tear.

Conclusion

The tenant's application for the return of April 2011 rent is dismissed in full without leave to reapply.

The tenant's application for return of the security deposit was premature at the time of the application.

The landlord's application for a monetary order in the amount of \$450.00 is dismissed in full without leave to reapply, and the request for recovery of the filing fee is also dismissed.

I therefore order that the landlord must return the full security deposit of \$330.00 to the tenant

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: July 29, 2011.

Residential Tenancy Branch