



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain all or part of the security deposit and pet deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage to the rental unit; unpaid rent; or damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain all or part of security deposit or pet deposit?

Background and Evidence

I was provided undisputed evidence as follows. The tenancy commenced November 1, 2010 on a month-to-month basis. The tenant paid a \$500.00 security deposit and a \$500.00 pet deposit. The tenant was required to pay rent of \$1,000.00 on the 1st day of every month. During the tenancy the tenant rented out a room to an occupant. The tenant vacated the rental unit March 30, 2011 and the occupant remained until August 1, 2011.

The landlord submitted that at the end of March 2011 the tenant told the landlord she was moving out and that the occupant would remain in the unit. The landlord and occupant had a meeting and the occupant expressed to the landlord that he was unaware that he was to take over the tenancy. The landlord and the occupant agreed to form a tenancy agreement commencing May 1, 2011 for the monthly rent of \$1,000.00. The occupant did not agree to commence the tenancy effective April 1, 2011 and gave the landlord \$450.00 for April 2011 -- the amount he would have paid the tenant for use of the room.

The tenant acknowledged that she decided to move out at the last minute and explained that she made an agreement with her roommate (the occupant) that he would take over the tenancy. When the tenant advised the landlord of this arrangement the landlord agreed to it.

The landlord refuted the tenant's statements and claimed that she told the tenant she felt she had no choice but to talk to the occupant about forming a tenancy with her given the tenant's late notice.

The landlord is seeking to recover the loss of rent she incurred for the month of April 2011 in the amount of \$550.00. In addition, the landlord is seeking \$125.00 for carpet cleaning and \$50.00 for repairing holes dug in the yard by the tenant's dog. The landlord did not provide any receipts, inspection reports or photographs to substantiate her claims for cleaning costs or costs to repair the yard.

The tenant did not agree to any carpet cleaning costs as she claimed she cleaned them before moving out. The tenant also submitted that there were holes in the yard before she got a dog and the tenant had purchased soil and filled holes in the yard.

Analysis

Where a tenant wishes to end a month-to-month tenancy the tenant is required to give the landlord one full month of written notice. The tenant did not give the landlord such notice and I accept that the landlord suffered a loss of rent of \$550.00 as a result of the tenant's failure to give sufficient notice. Alternatively, a landlord and tenant can mutually agree to end the tenancy earlier must the agreement must be in writing. The parties did not sign a mutual agreement to end tenancy.

I do not find the tenant's testimony that she had an agreement with the occupant to take over the tenancy agreement sufficient to relieve the tenant of her obligations under the Act.

Although the occupant did form a tenancy agreement with the landlord, the agreement did not commence until the following month. The landlord could not force the occupant to enter into a tenancy starting April 1, 2011 and I find it reasonable that there was a delay of one month given the tenant's late notice to both parties.

In light of the above, I grant the landlord's request for compensation of \$550.00. I also award the landlord the filing fee paid for this application for a total award of \$600.00. I authorize the landlord to withhold \$600.00 from the tenant's security deposit and pet

deposit. The balance of \$400.00 must be returned to the tenant and I provide the tenant with a Monetary Order in the amount of \$400.00 to serve upon the landlord if payment is not made.

I make no award to the landlord for cleaning or damages to the yard. I found the disputed verbal testimony to be insufficient to meet the landlord's burden to prove her claims in the absence of other evidence, such as: receipts, photographs or condition inspection reports.

Conclusion

The landlord has been authorized to retain \$600.00 from the tenant's security deposit and pet deposit and must pay the tenant the balance of \$400.00. The tenant has been provided a Monetary Order in the amount of \$400.00 to ensure payment is made.

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: August 19, 2011.

Residential Tenancy Branch